

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 89

AN ACT

To repeal sections 247.060, 253.090, 386.850, 444.773, 621.250, 643.020, 643.040, 643.050, 643.060, 643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 643.242, 643.245, 643.250, 643.253, 643.260, 644.036, 644.051, 644.054, 644.071, 701.033, and 701.332, RSMo, and to enact in lieu thereof forty new sections relating to natural resources, with penalty provisions and an emergency clause for certain sections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 247.060, 253.090, 386.850, 444.773,
2 621.250, 643.020, 643.040, 643.050, 643.060, 643.079, 643.080,
3 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 643.242,
4 643.245, 643.250, 643.253, 643.260, 644.036, 644.051, 644.054,
5 644.071, 701.033, and 701.332, RSMo, are repealed and forty new
6 sections enacted in lieu thereof, to be known as sections 37.970,
7 67.4500, 67.4505, 67.4510, 67.4515, 67.4520, 192.1250, 247.060,
8 253.090, 442.014, 444.771, 444.773, 537.292, 621.250, 640.018,
9 640.128, 640.850, 643.020, 643.040, 643.050, 643.060, 643.079,
10 643.080, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240,
11 643.242, 643.245, 643.250, 644.036, 644.051, 644.054, 644.071,

644.145, 701.033, 701.058, and 1, to read as follows:

37.970. 1. It shall be the policy of each state department to carry out its mission with full transparency to the public. Any data collected in the course of its duties shall be made available to the public in a timely fashion. Data, reports, and other information resulting from any activities conducted by the department in the course of its duties shall be easily accessible by any member of the public.

2. Each department shall broadly interpret any request for information under section 610.023:

(1) Even if such request for information does not use the words "sunshine request", "open records request", "public records request", or any such similar wording;

(2) Even if the communication is simply an inquiry as to the availability or existence of data or information; and

(3) Regardless of the format in which the communication is made, including electronic mail, facsimile, internet, postal mail, in person, telephone, or any other format.

3. Any failure by a department to release information shall, in addition to any other applicable violation of law, be considered a violation of the department's policy under this section and shall constitute a breach of the public's trust.

4. This section shall not be construed to limit or exceed the requirements of the provisions in chapter 610, nor shall this section require different treatment of a record considered closed or confidential under section 610.021 than what is required under that section.

67.4500. As used in sections 67.4500 to 67.4520, the

following terms shall mean:

(1) "Authority", any county drinking water supply lake authority created by sections 67.4500 to 67.4520;

(2) "Conservation storage level", the target elevation established for a drinking water supply lake at the time of design and construction of such lake;

(3) "Costs", the sum total of all reasonable or necessary expenses incidental to the acquisition, construction, expansion, repair, alteration, and improvement of the project, including without limitation the following: the expense of studies and surveys; the cost of all lands, properties, rights, easements, and franchises acquired; land title and mortgage guaranty policies; architectural and engineering services; legal, organizational marketing, or other special services; provisions for working capital; reserves for principal and interest; and all other necessary and incidental expenses, including interest during construction on bonds issued to finance the project and for a period subsequent to the estimated date of completion of the project;

(4) "Project", recreation and tourist facilities and services, including, but not limited to, lakes, parks, recreation centers, restaurants, hunting and fishing reserves, historic sites and attractions, and any other facilities that the authority may desire to undertake, including the related infrastructure buildings and the usual and convenient facilities appertaining to any undertakings, and any extensions or improvements of any facilities, and the acquisition of any property necessary therefore, all as may be related to the

1 development of a water supply source, recreational and tourist
2 accommodations, and facilities;

3 (5) "Water commission", a water commission owning a
4 reservoir formed pursuant to sections 393.700 to 393.770;

5 (6) "Watershed", the area that contributes or may
6 contribute to the surface water of any lake as determined by the
7 authority.

8 67.4505. 1. There is hereby created within any county of
9 the third classification with a township form of government and
10 with more than seven thousand two hundred but fewer than seven
11 thousand three hundred inhabitants a county drinking water supply
12 lake authority, which shall be a body corporate and politic and a
13 political subdivision of this state.

14 2. The authority may exercise the powers provided to it
15 under section 67.4520 over the reservoir area encompassing any
16 drinking water supply lake of one thousand five hundred acres or
17 more, as measured at its conservation storage level, and within
18 the lake's watershed.

19 3. It shall be the purpose of each authority to promote the
20 general welfare and a safe drinking water supply through the
21 construction, operation, and maintenance of a drinking water
22 supply lake.

23 4. The income of the authority and all property at any time
24 owned by the authority shall be exempt from all taxation or any
25 assessments whatsoever to the state or of any political
26 subdivision, municipality, or other governmental agency thereof.

27 5. No county in which an authority is organized shall be
28 held liable in connection with the construction, operation, or

1 maintenance of any project or program undertaken pursuant to
2 sections 67.4500 to 67.4520, including any actions taken by the
3 authority in connection with such project or program.

4 67.4510. A county drinking water supply lake authority
5 shall consist of at least six but not more than thirty members,
6 appointed as follows:

7 (1) Members of the water commission shall appoint all
8 members to the authority, one-third of the initial members for a
9 six-year term, one-third for a four-year term, and the remaining
10 one-third for a two-year term, until a successor is appointed;
11 provided that, if there is an odd number of members, the last
12 person appointed shall serve a two-year term. Upon the
13 expiration of each term, a successor shall be appointed for a
14 six-year term;

15 (2) No person shall be appointed to serve on the authority
16 unless he or she is a registered voter in the state for more than
17 five years, a resident in the county where the water commission
18 is located for more than five years, and over the age of
19 twenty-five years. If any member moves outside such county, the
20 seat shall be deemed vacant and a new member shall be appointed
21 by the county commission to complete the unexpired term.

22 67.4515. 1. The water commission shall by resolution
23 establish a date and time for the initial meeting of the
24 authority.

25 2. At the initial meeting, and annually thereafter, the
26 authority shall elect one of its members as chairman and one as
27 vice chairman, and appoint a secretary and a treasurer who may be
28 a member of the authority. If not a member of the authority, the

1 secretary or treasurer shall receive compensation that shall be
2 fixed from time to time by action of the authority. The
3 authority may appoint an executive director who shall not be a
4 member of the authority and who shall serve at its pleasure. If
5 an executive director is appointed, he or she shall receive such
6 compensation as shall be fixed from time to time by action of the
7 authority. The authority may designate the secretary to act in
8 lieu of the executive director. The secretary shall keep a
9 record of the proceedings of the authority and shall be the
10 custodian of all books, documents, and papers filed with the
11 authority, the minute books or journal thereof, and its official
12 seal. The secretary may cause copies to be made of all minutes
13 and other records and documents of the authority and may give
14 certificates under the official seal of the authority to the
15 effect that the copies are true and correct copies, and all
16 persons dealing with the authority may rely on such certificates.
17 The authority, by resolution duly adopted, shall fix the powers
18 and duties of its executive director as it may from time to time
19 deem proper and necessary.

20 3. Each member of the authority shall execute a surety bond
21 in the penal sum of fifty thousand dollars or, in lieu thereof,
22 the chairman of the authority shall execute a blanket bond
23 covering each member and the employees or other officers of the
24 authority, each surety bond to be conditioned upon the faithful
25 performance of the duties of the office or offices covered, to be
26 executed by a surety company authorized to transact business in
27 the state as surety, and to be approved by the attorney general
28 and filed in the office of the secretary of state. The cost of

1 each such bond shall be paid by the authority.

2 4. No authority member shall participate in any
3 deliberations or decisions concerning issues where the authority
4 member has a direct financial interest in contracts, property,
5 supplies, services, facilities, or equipment purchased, sold, or
6 leased by the authority. Authority members shall additionally be
7 subject to the limitations regarding the conduct of public
8 officials as provided in chapter 105.

9 67.4520. 1. The authority may:

10 (1) Acquire, own, construct, lease, and maintain
11 recreational or water quality projects;

12 (2) Acquire, own, lease, sell, or otherwise dispose of
13 interests in and to real property and improvements situated
14 thereon and in personal property necessary to fulfill the
15 purposes of the authority;

16 (3) Contract and be contracted with, and to sue and be
17 sued;

18 (4) Accept gifts, grants, loans, or contributions from the
19 federal government, the state of Missouri, political
20 subdivisions, municipalities, foundations, other public or
21 private agencies, individuals, partnerships, or corporations;

22 (5) Employ such managerial, engineering, legal, technical,
23 clerical, accounting, advertising, stenographic, and other
24 assistance as it may deem advisable. The authority may also
25 contract with independent contractors for any of the foregoing
26 assistance;

27 (6) Disburse funds for its lawful activities and fix
28 salaries and wages of its employees;

1 (7) Fix rates, fees, and charges for the use of any
2 projects and property owned, leased, operated, or managed by the
3 authority;

4 (8) Adopt, alter, or repeal its own bylaws, rules, and
5 regulations governing the manner in which its business may be
6 transacted; however, said bylaws, rules, and regulations shall
7 not exceed the powers granted to the authority by sections
8 67.4500 to 67.4520;

9 (9) Either jointly with a similar body, or separately,
10 recommend to the proper departments of the government of the
11 United States, or any state or subdivision thereof, or to any
12 other body, the carrying out of any public improvement;

13 (10) Provide for membership in any official, industrial,
14 commercial, or trade association, or any other organization
15 concerned with such purposes, for receptions of officials or
16 others as may contribute to the advancement of the authority and
17 development therein, and for such other public relations
18 activities as will promote the same, and such activities shall be
19 considered a public purpose;

20 (11) Cooperate with municipalities and other political
21 subdivisions as provided in chapter 70;

22 (12) Enter into any agreement with any other state, agency,
23 authority, commission, municipality, person, corporation, or the
24 United States, to effect any of the provisions contained in
25 sections 67.4500 to 67.4520;

26 (13) Sell and supply water and construct, own, and operate
27 infrastructure projects in areas within its jurisdiction,
28 including but not limited to roads, bridges, water and sewer

1 systems, and other infrastructure improvements;

2 (14) Issue revenue bonds in the same manner as provided
3 under section 67.789; and

4 (15) Adopt tax increment financing within its boundaries in
5 the same manner as provided under section 67.790.

6 2. The state or any political subdivision or municipal
7 corporation thereof may in its discretion, with or without
8 consideration, transfer or cause to be transferred to the
9 authority or may place in its possession or control, by deed,
10 lease, or other contract or agreement, either for a limited
11 period or in fee, any property wherever situated.

12 3. The state or any political subdivision may appropriate,
13 allocate, and expend such funds of the state or political
14 subdivision for the benefit of the authority as are reasonable
15 and necessary to carry out the provisions of sections 67.4500 to
16 67.4520.

17 4. The authority shall have the authority to exercise all
18 zoning and planning powers that are granted to cities, towns, and
19 villages under chapter 89, except that the authority shall not
20 exercise such powers inside the corporate limits of any city,
21 town, or village which has adopted a city plan under the laws of
22 this state before August 28, 2011.

23 192.1250. The department of health and senior services
24 shall examine the feasibility of implementing a real-time water
25 quality testing system for measuring the bacterial water quality
26 at state-owned public beaches and shall issue a report of its
27 findings to the general assembly by December 31, 2011.

28 247.060. 1. The management of the business and affairs of

1 the district is hereby vested in a board of directors, who shall
2 have all the powers conferred upon the district except as herein
3 otherwise provided[, who shall serve without pay]. It shall be
4 composed of five members, each of whom shall be a voter of the
5 district and shall have resided in said district one whole year
6 immediately prior to his election. A member shall be at least
7 twenty-five years of age and shall not be delinquent in the
8 payment of taxes at the time of his election. Except as provided
9 in subsection 2 of this section, the term of office of a member
10 of the board shall be three years. The remaining members of the
11 board shall appoint a qualified person to fill any vacancy on the
12 board. If no qualified person who lives in the subdistrict for
13 which there is a vacancy is willing to serve on the board, the
14 board may appoint an otherwise qualified person who lives in the
15 district but not in the subdistrict in which the vacancy exists
16 to fill such vacancy.

17 2. After notification by certified mail that he or she has
18 two consecutive unexcused absences, any member of the board
19 failing to attend the meetings of the board for three consecutive
20 regular meetings, unless excused by the board for reasons
21 satisfactory to the board, shall be deemed to have vacated the
22 seat, and the secretary of the board shall certify that fact to
23 the board. The vacancy shall be filled as other vacancies
24 occurring in the board.

25 3. The initial members of the board shall be appointed by
26 the circuit court and one shall serve until the immediately
27 following first Tuesday after the first Monday in April, two
28 shall serve until the first Tuesday after the first Monday in

1 April on the second year following their appointment and the
2 remaining appointees shall serve until the first Tuesday after
3 the first Monday in April on the third year following their
4 appointment. On the expiration of such terms and on the
5 expiration of any subsequent term, elections shall be held as
6 otherwise provided by law, and such elections shall be held in
7 April pursuant to section 247.180.

8 4. In 2008, 2009, and 2010, directors elected in such years
9 shall serve from the first Tuesday after the first Monday in June
10 until the first Tuesday in April of the third year following the
11 year of their election. All directors elected thereafter shall
12 serve from the first Tuesday in April until the first Tuesday in
13 April of the third year following the year of their election.

14 5. Each member of the board may receive an attendance fee
15 not to exceed one hundred dollars for attending each regularly
16 called board meeting, or special meeting, but shall not be paid
17 for attending more than two meetings in any calendar month,
18 except that in a county of the first classification, a member
19 shall not be paid for attending more than four meetings in any
20 calendar month. However, no board member shall be paid more than
21 one attendance fee if such member attends more than one board
22 meeting in a calendar week. In addition, the president of the
23 board of directors may receive fifty dollars for attending each
24 regularly or specially called board meeting, but shall not be
25 paid the additional fee for attending more than two meetings in
26 any calendar month. Each member of the board shall be reimbursed
27 for his or her actual expenditures in the performance of his or
28 her duties on behalf of the district.

1 6. In no event, however, shall a board member receive any
2 attendance fees or additional compensation authorized in
3 subsection 5 of this section until after such board member has
4 completed a minimum of six hours training regarding the
5 responsibilities of the board and its members concerning the
6 basics of water treatment and distribution, budgeting and rates,
7 water utility planning, the funding of capital improvements, the
8 understanding of water utility financial statements, the Missouri
9 sunshine law, and this chapter.

10 7. The circuit court of the county having jurisdiction over
11 the district shall have jurisdiction over the members of the
12 board of directors to suspend any member from exercising his or
13 her office, whensoever it appears that he or she has abused his
14 or her trust or become disqualified; to remove any member upon
15 proof or conviction of gross misconduct or disqualification for
16 his or her office; or to restrain and prevent any alienation of
17 property of the district by members, in cases where it is
18 threatened, or there is good reason to apprehend that it is
19 intended to be made in fraud of the rights and interests of the
20 district.

21 8. The jurisdiction conferred by this section shall be
22 exercised as in ordinary cases upon petition, filed by or at the
23 instance of any member of the board, or at the instance of any
24 ten voters residing in the district who join in the petition,
25 verified by the affidavit of at least one of them. The petition
26 shall be heard in a summary manner after ten days' notice in
27 writing to the member or officer complained of. An appeal shall
28 lie from the judgment of the circuit court as in other causes,

1 and shall be speedily determined; but an appeal does not operate
2 under any condition as a supersedeas of a judgment of suspension
3 or removal from office.

4 253.090. 1. All revenue derived from privileges,
5 conveniences, contracts or otherwise, all moneys received by
6 gifts, bequests or contributions or from county or municipal
7 sources and all moneys received from the operation of
8 concessions, projects or facilities and from resale items shall
9 be paid into the state treasury to the credit of the "State Park
10 Earnings Fund", which is hereby created. In the event any state
11 park or any part thereof is taken under the power of eminent
12 domain by the federal government the moneys paid for the taking
13 shall be deposited in the state park earnings fund. The fund
14 shall be used solely for the payment of the expenditures of the
15 department of natural resources in the administration of this
16 law, except that in any fiscal year the department may expend a
17 sum not to exceed fifty percent of the preceding fiscal year's
18 deposits to the state park earnings fund for the purpose of:

19 (1) Paying the principal and interest of revenue bonds
20 issued;

21 (2) Providing an interest and sinking fund;

22 (3) Providing a reasonable reserve fund;

23 (4) Providing a reasonable fund for depreciation; and

24 (5) Paying for feasibility reports necessary for the
25 issuing of revenue bonds.

26 2. Notwithstanding the provisions of section 33.080 to the
27 contrary, any moneys remaining in the fund at the end of the
28 biennium shall not revert to the credit of the general revenue

1 fund.

2 3. A good and sufficient bond conditioned upon the faithful
3 performance of the contract and compliance with this law shall be
4 required of all contractors.

5 [3.] 4. Any person who contracts pursuant to this section
6 with the state shall keep true and accurate records of his or her
7 receipts and disbursements arising out of the performance of the
8 contract and shall permit the department of natural resources and
9 the state auditor to audit such records.

10 [4. All moneys remaining in the state park revolving fund
11 on July 1, 2000, shall be transferred to the state park earnings
12 fund.]

13 442.014. 1. This act shall be known and may be cited as
14 the "Private Landowner Protection Act".

15 2. As used in this section, unless the context otherwise
16 requires, the following terms mean:

17 (1) "Conservation easement", a nonpossessory interest of a
18 holder in real property imposing limitations or affirmative
19 obligations the purposes of which include retaining or protecting
20 natural, scenic, or open-space values of real property, assuring
21 its availability for agricultural, forest, recreational, or open-
22 space use, protecting natural resources, maintaining or enhancing
23 air or water quality, or preserving the historical,
24 architectural, archaeological, or cultural aspects of real
25 property;

26 (2) "Holder", any of the following:

27 (a) A governmental body empowered to hold an interest in
28 real property under the laws of this state or the United States;

1 (b) A charitable corporation, charitable association, or
2 charitable trust, the purposes, powers, or intent of which
3 include retaining or protecting the natural, scenic, or open-
4 space values of real property, assuring the availability of real
5 property for agricultural, forest, recreational, or open-space
6 use, protecting natural resources, maintaining or enhancing air
7 or water quality, or preserving the historical, architectural,
8 archaeological, or cultural aspects of real property; or

9 (c) An individual or other private entity;

10 (3) "Third-party right of enforcement", a right expressly
11 provided in a conservation easement to enforce any of its items
12 granted to a designated governmental body, charitable
13 corporation, charitable association, charitable trust,
14 individual, or any other private entity which, although eligible
15 to be a holder, is not a holder.

16 3. (1) Except as otherwise provided in this section, a
17 conservation easement may be created, conveyed, recorded,
18 assigned, released, modified, terminated, or otherwise altered or
19 affected in the same manner as other easements. No right or duty
20 in favor of or against a holder and no right in favor of a person
21 having a third-party right of enforcement arises under a
22 conservation easement before its acceptance by the holder and a
23 recordation of the acceptance. Except as provided in subdivision
24 (2) of this subsection, a conservation easement is unlimited in
25 duration unless the instrument creating it provides otherwise.

26 (2) An interest in real property in existence at the time a
27 conservation easement is created is not impaired by it unless the
28 owner of the interest is a party to the conservation easement or

1 consents to it.

2 4. (1) An action affecting a conservation easement may be
3 brought by an owner of an interest in real property burdened by
4 the easement; a holder of the easement, a person having a third-
5 party right of enforcement; or a person authorized by other law.

6 (2) This section does not affect the power of a court to
7 modify or terminate a conservation easement in accordance with
8 the principles of law and equity.

9 5. A conservation easement is valid even though:

10 (1) It is not appurtenant to an interest in real property;

11 (2) It can be or has been assigned to another holder;

12 (3) It is not of a character that has been recognized
13 traditionally at common law;

14 (4) It imposes a negative burden that would prevent a
15 landowner from performing acts on the land he or she would
16 otherwise be privileged to perform absent the agreed-upon
17 easement;

18 (5) It imposes affirmative obligations upon the owner of an
19 interest in the burdened property or upon the holder;

20 (6) The benefit does not touch or concern real property; or

21 (7) There is no privity of estate or of contract.

22 6. Nothing in this section shall affect the ability of any
23 public utility, municipal utility, joint municipal utility
24 commission, rural electric cooperative, telephone cooperative, or
25 public water supply district to acquire an easement, either
26 through negotiation with an owner of an interest in real property
27 or by condemnation, to lay or construct plants or facilities for
28 the transmission or distribution of electricity, natural gas,

1 telecommunications service, water, or the carriage of sewage
2 along or across a conservation easement.

3 7. This section applies to any interest created after its
4 effective date which complies with this section, whether
5 designated as a conservation easement or as a covenant, equitable
6 servitude, restriction, easement, or otherwise. This section
7 applies to any interest created before its effective date if it
8 would have been enforceable had it been created after its
9 effective date unless retroactive application contravenes the
10 constitution or laws of this state or the United States. This
11 section does not alter the terms of any interest created before
12 its effective date, or impose any additional burden or obligation
13 on any grantor or grantee of such interest, or on their
14 successors or assigns. This section does not invalidate any
15 interest, whether designated as a conservation or preservation
16 easement or as a covenant, equitable servitude, restriction,
17 easement, or otherwise, that is enforceable under other laws of
18 this state.

19 444.771. Notwithstanding any other provision of law to the
20 contrary, the commission and the department shall not issue any
21 permits under this chapter or under chapters 643 or 644 to any
22 person whose mine plan boundary is within one thousand feet of
23 any real property where an accredited school has been located for
24 at least five years prior to such application for permits made
25 under these provisions, except that the provisions of this
26 section shall not apply to any request for an expansion to an
27 existing mine or to any underground mining operation.

28 444.773. 1. All applications for a permit shall be filed

1 with the director, who shall promptly investigate the application
2 and make a recommendation to the commission within four weeks
3 after the public notice period provided in section 444.772
4 expires as to whether the permit should be issued or denied. If
5 the director determines that the application has not fully
6 complied with the provisions of section 444.772 or any rule or
7 regulation promulgated pursuant to that section, the director
8 shall recommend denial of the permit. The director shall
9 consider any written comments when making his or her
10 recommendation to the commission on the issuance or denial of the
11 permit.

12 2. If the recommendation of the director is to deny the
13 permit, a hearing as provided in sections 444.760 to 444.790, if
14 requested by the applicant within fifteen days of the date of
15 notice of recommendation of the director, shall be held by the
16 commission.

17 3. If the recommendation of the director is for issuance of
18 the permit, the director shall issue the permit without a public
19 meeting or a hearing except that upon petition, received prior to
20 the date of the notice of recommendation, from any person whose
21 health, safety or livelihood will be unduly impaired by the
22 issuance of this permit, a public meeting or a hearing may be
23 held. If a public meeting is requested pursuant to this chapter
24 and the applicant agrees, the director shall, within thirty days
25 after the time for such request has passed, order that a public
26 meeting be held. The meeting shall be held in a reasonably
27 convenient location for all interested parties. The applicant
28 shall cooperate with the director in making all necessary

1 arrangements for the public meeting. Within thirty days after
2 the close of the public meeting, the director shall recommend to
3 the commission approval or denial of the permit. If the public
4 meeting does not resolve the concerns expressed by the public,
5 any person whose health, safety or livelihood will be unduly
6 impaired by the issuance of such permit may make a written
7 request to the land reclamation commission for a formal public
8 hearing. The land reclamation commission may grant a public
9 hearing to formally resolve concerns of the public. Any public
10 hearing before the commission shall address one or more of the
11 factors set forth in this section.

12 4. In any public hearing [held pursuant to this section the
13 burden of proof shall be on the applicant for a permit.], if the
14 commission finds, based on competent and substantial scientific
15 evidence on the record, that an interested party's health, safety
16 or livelihood will be unduly impaired by the issuance of the
17 permit, the commission may deny such permit. If the commission
18 finds, based on competent and substantial scientific evidence on
19 the record, that the operator has demonstrated, during the
20 five-year period immediately preceding the date of the permit
21 application, a pattern of noncompliance at other locations in
22 Missouri that suggests a reasonable likelihood of future acts of
23 noncompliance, the commission may deny such permit. In
24 determining whether a reasonable likelihood of noncompliance will
25 exist in the future, the commission may look to past acts of
26 noncompliance in Missouri, but only to the extent they suggest a
27 reasonable likelihood of future acts of noncompliance. Such past
28 acts of noncompliance in Missouri, in and of themselves, are an

1 insufficient basis to suggest a reasonable likelihood of future
2 acts of noncompliance. In addition, such past acts shall not be
3 used as a basis to suggest a reasonable likelihood of future acts
4 of noncompliance unless the noncompliance has caused or has the
5 potential to cause, a risk to human health or to the environment,
6 or has caused or has potential to cause pollution, or was
7 knowingly committed, or is defined by the United States
8 Environmental Protection Agency as other than minor. If a
9 hearing petitioner or the commission demonstrates either present
10 acts of noncompliance or a reasonable likelihood that the permit
11 seeker or the operations of associated persons or corporations in
12 Missouri will be in noncompliance in the future, such a showing
13 will satisfy the noncompliance requirement in this subsection.
14 In addition, such basis must be developed by multiple
15 noncompliances of any environmental law administered by the
16 Missouri department of natural resources at any single facility
17 in Missouri that resulted in harm to the environment or impaired
18 the health, safety or livelihood of persons outside the facility.
19 For any permit seeker that has not been in business in Missouri
20 for the past five years, the commission may review the record of
21 noncompliance in any state where the applicant has conducted
22 business during the past five years. Any decision of the
23 commission made pursuant to a hearing held pursuant to this
24 section is subject to judicial review as provided in chapter 536.
25 No judicial review shall be available, however, until and unless
26 all administrative remedies are exhausted.

27 537.292. 1. Notwithstanding any other provision of law to
28 the contrary, the use of motor vehicles on a public street or

1 highway in a manner which is legal under state and local law
2 shall not constitute a public or private nuisance, and shall not
3 be the basis of a civil action for public or private nuisance.

4 2. No individual or business entity shall be subject to any
5 civil action in law or equity for a public or private nuisance on
6 the basis of such individual or business entity legally using
7 motor vehicles on a public street or highway. Any actions by a
8 court in this state to enjoin the use of a public street or
9 highway in violation of this section and any damages awarded or
10 imposed by a court, or assessed by a jury, against an individual
11 or business entity for public or private nuisance in violation of
12 this section shall be null and void.

13 3. Notwithstanding any other provision of law to the
14 contrary, nothing in this section shall be construed to limit
15 civil liability for compensatory damages arising from physical
16 injury to another human being.

17 621.250. 1. All authority to hear appeals granted in
18 chapters 260, 444, 640, 643, and 644, and to the hazardous waste
19 management commission in chapter 260, the land reclamation
20 commission in chapter 444, the safe drinking water commission in
21 chapter 640, the air conservation commission in chapter 643, and
22 the clean water commission in chapter 644 shall be transferred to
23 the administrative hearing commission under this chapter. The
24 authority to render final decisions after hearing on appeals
25 heard by the administrative hearing commission shall remain with
26 the commissions listed in this subsection. The [commissions
27 listed in this subsection] administrative hearing commission may
28 render a recommended final [decisions] decision after hearing or

1 through stipulation, consent order, agreed settlement or by
2 disposition in the nature of default judgment, judgment on the
3 pleadings, or summary determination, consistent with the
4 requirements of this subsection and the rules and procedures of
5 the administrative hearing commission.

6 2. Except as otherwise provided by law, any person or
7 entity who is a party to, or who is aggrieved or adversely
8 affected by, any finding, order, decision, or assessment for
9 which the authority to hear appeals was transferred to the
10 administrative hearing commission in subsection 1 of this section
11 may file a notice of appeal with the administrative hearing
12 commission within thirty days after any such finding, order,
13 decision, or assessment is placed in the United States mail or
14 within thirty days of any such finding, order, decision, or
15 assessment being delivered, whichever is earlier. Within sixty
16 days after the date on which the notice of appeal is filed the
17 administrative hearing commission [may] shall hold hearings and
18 make a recommended decision based on those hearings or [may]
19 shall make a recommended [decisions] decision based on
20 stipulation of the parties, consent order, agreed settlement or
21 by disposition in the nature of default judgment, judgment on the
22 pleadings, or summary determination, in accordance with the
23 requirements of this subsection and the rules and procedures of
24 the administrative hearing commission.

25 3. Any decision by the director of the department of
26 natural resources that may be appealed [to the commissions
27 listed] as provided in subsection 1 of this section [and] shall
28 contain a notice of the right of appeal in substantially the

1 following language: "If you were adversely affected by this
2 decision, you may appeal to have the matter heard by the
3 administrative hearing commission. To appeal, you must file a
4 petition with the administrative hearing commission within thirty
5 days after the date this decision was mailed or the date it was
6 delivered, whichever date was earlier. If any such petition is
7 sent by registered mail or certified mail, it will be deemed
8 filed on the date it is mailed; if it is sent by any method other
9 than registered mail or certified mail, it will be deemed filed
10 on the date it is received by the administrative hearing
11 commission.". Within fifteen days after the administrative
12 hearing commission renders its recommended decision, it shall
13 transmit the record and a transcript of the proceedings, together
14 with the administrative hearing commission's recommended decision
15 to the commission having authority to issue a final decision.
16 The final decision of the commission shall be issued within
17 ninety days of the date the notice of appeal is filed and shall
18 be based only on the facts and evidence in the hearing record.
19 The commission may adopt the recommended decision as its final
20 decision. The commission may change a finding of fact or
21 conclusion of law made by the administrative hearing commission,
22 or may vacate or modify the recommended decision issued by the
23 administrative hearing commission, only if the commission states
24 in writing the specific reason for a change made under this
25 subsection.

26 4. In the event the person filing the appeal prevails in
27 any dispute under this section, interest shall be allowed upon
28 any amount found to have been wrongfully collected or erroneously

1 paid at the rate established by the director of the department of
2 revenue under section 32.065.

3 5. Appropriations shall be made from the respective funds
4 of the various commissions to cover the administrative hearing
5 commission's costs associated with these appeals.

6 6. In all matters heard by the administrative hearing
7 commission under this section, the burden of proof shall comply
8 with section 640.012. The hearings shall be conducted by the
9 administrative hearing commission in accordance with the
10 provisions of chapter 536 and its regulations promulgated
11 thereunder.

12 7. No cause of action or appeal arising out of any finding,
13 order, decision, or assessment of any of the commissions listed
14 in subsection 1 of this section shall accrue in any court unless
15 the party seeking to file such cause of action or appeal shall
16 have filed a notice of appeal and received a final decision in
17 accordance with the provisions of this section.

18 640.018. 1. In any case where the department has not
19 issued a permit or rendered a permit decision by the expiration
20 of a statutorily-required time frame for any application for a
21 permit under this chapter or chapters 260, 278, 319, 444, 643, or
22 644, the permit shall be issued as of the first day following the
23 expiration of the required time frame, provided all necessary
24 information has been submitted for the application and the
25 department has been in possession of all such information for the
26 duration of the required time frame. This subsection shall be
27 considered in addition to, and not in lieu thereof, any other
28 provision of law regarding consequences of failure by the

1 department to issue a permit or permit decision by the expiration
2 of a required time frame.

3 2. If engineering plans, specifications, and designs
4 prepared by a registered professional engineer are submitted to
5 the department of natural resources as a part of a permit
6 application or permit modification, the permit application or
7 permit modification shall include a statement that the plans,
8 specifications, and designs were prepared in accordance with the
9 applicable requirements and shall be sealed by the registered
10 professional engineer in accordance with section 327.411, as
11 applicable. The department shall use the complete, sealed
12 engineering plans, specifications, and designs as submitted in
13 addition to permit applications and other relevant information,
14 documents, and materials in developing comments on the
15 engineering submittals and in determining whether to issue or
16 deny permits. The review of documents, plans, specifications,
17 and designs sealed by a registered professional engineer for an
18 applicant shall be conducted by a registered professional
19 engineer or an engineering intern on behalf of the department.

20 3. The department shall designate supervisory registered
21 professional engineers for permitting purposes under this chapter
22 and chapters 260, 278, 319, 444, 643, and 644. Any permit
23 applicant receiving written comments on an engineering submittal
24 may request a determination from the department's supervisory
25 registered professional engineer as to a final disposition of the
26 department's comments regarding engineering submittals in
27 determining a decision on the permit. The department's
28 supervisory engineer shall inform the permit applicant of a

1 preliminary decision within fifteen days after the permit
2 applicant's request for a determination and shall make a final
3 determination within thirty days of such request.

4 4. Nothing in this section shall be construed to require
5 plans or other submittals to the department pursuant to an
6 application to come under a general permit or an application for
7 a site specific permit to be prepared by a registered
8 professional engineer, unless otherwise required under state or
9 federal law.

10 640.128. If an entity that holds a permit issued under
11 chapter 644 or under sections 640.100 to 640.140 voluntarily
12 reports to the department of natural resources the results of any
13 water quality testing conducted by the entity, and such results
14 indicate a potential risk to public health, the department shall
15 immediately notify the local public health authority and the
16 department of health and senior services.

17 640.850. The governor shall convene a committee of
18 representatives of the departments of health and senior services,
19 natural resources, economic development, agriculture, and
20 conservation. The committee shall evaluate opportunities for
21 consolidating services with the goal of improving efficiency and
22 reducing cost while optimizing the benefits to the citizens of
23 Missouri. As part of its evaluation, the committee shall
24 specifically consider the transfer of the division of energy from
25 the department of natural resources to the department of economic
26 development and the consolidation of water quality laboratory
27 testing under the department of health and senior services for
28 purposes of meeting water testing requirements of the federal

1 Safe Drinking Water Act and the Federal Water Pollution Control
2 Act. The committee shall provide recommendations to the governor
3 and general assembly no later than December 31, 2011.

4 643.020. When used in this chapter and in standards, rules
5 and regulations promulgated under authority of this chapter, the
6 following words and phrases mean:

7 (1) "AHERA", Asbestos Hazard Emergency Response Act of 1986
8 (P.L. 99-519);

9 (2) "Abatement project designer", an individual who designs
10 or plans AHERA asbestos abatement;

11 (3) "Air cleaning device", any method, process, or
12 equipment which removes, reduces, or renders less obnoxious air
13 contaminants discharged into ambient air;

14 (4) "Air contaminant", any particulate matter or any gas or
15 vapor or any combination thereof;

16 (5) "Air contaminant source", any and all sources of air
17 contaminants whether privately or publicly owned or operated;

18 (6) "Air pollution", the presence in the ambient air of one
19 or more air contaminants in quantities, of characteristics and of
20 a duration which directly and proximately cause or contribute to
21 injury to human, plant, or animal life or health or to property
22 or which unreasonably interferes with the enjoyment of life or
23 use of property;

24 (7) "Ambient air", all space outside of buildings, stacks,
25 or exterior ducts;

26 (8) "Area of the state", any geographical area designated
27 by the commission;

28 (9) "Asbestos", the asbestiform varieties of chrysotile,

crocidolite, amosite, anthophyllite, tremolite and actinolite;

(10) "Asbestos abatement", the encapsulation, enclosure or removal of [asbestos containing] asbestos-containing materials in or from a building or air contaminant source, or preparation of friable [asbestos containing] asbestos-containing material prior to demolition;

(11) "Asbestos abatement contractor", any person who by agreement, contractual or otherwise, conducts asbestos abatement projects at a location other than his own place of business;

(12) "Asbestos abatement projects", an activity undertaken to encapsulate, enclose or remove [ten] one hundred sixty square feet or [sixteen] two hundred sixty linear feet or thirty-five cubic feet or more of [friable asbestos containing] regulated asbestos-containing materials from buildings and other air contaminant sources, or to demolish buildings and other air contaminant sources containing [ten] one hundred sixty square feet or [sixteen] two hundred sixty linear feet or thirty-five cubic feet or more of regulated asbestos-containing materials;

(13) "Asbestos abatement supervisor", an individual who directs, controls, or supervises others in asbestos abatement projects;

(14) "Asbestos abatement worker", an individual who engages in asbestos abatement projects;

(15) "Asbestos air sampling professional", an individual who by qualifications and experience is proficient in asbestos abatement air monitoring. The individual shall conduct, oversee or be responsible for air monitoring of asbestos abatement projects before, during and after the project has been completed;

1 (16) "Asbestos air sampling technician", an individual who
2 has been trained by an air sampling professional to do air
3 monitoring. Such individual conducts air monitoring of an
4 asbestos abatement project before, during and after the project
5 has been completed;

6 (17) "[Asbestos containing] asbestos-containing material",
7 any material or product which contains more than one percent
8 asbestos[, by weight];

9 (18) "Class A source", either a class A1, A2 or A3 source
10 as defined in this section;

11 (19) "Class A1 source", any air contaminant source with the
12 potential to emit equal to or greater than one hundred tons per
13 year of an air contaminant;

14 (20) "Class A2 source", any air contaminant source, which
15 is not a class A1 source, and with the potential, air cleaning
16 devices not considered, to emit equal to or greater than one
17 hundred tons per year of an air contaminant;

18 (21) "Class A3 source", any air contaminant source which
19 emits or has the potential to emit, ten tons per year or more of
20 any hazardous air pollutant or twenty-five tons of any
21 combination of hazardous air pollutants, or as defined pursuant
22 to section 112 of the federal Clean Air Act, as amended, 42
23 U.S.C. 7412;

24 (22) "Class B source", any air contaminant source with the
25 potential, air cleaning devices not considered, to emit equal to
26 or greater than the de minimis amounts of an air contaminant
27 established by the commission, but not a class A source;

28 (23) "Commission", the air conservation commission of the

1 state of Missouri created in section 643.040;

2 (24) "Competent person", as defined in the United States
3 Occupational Safety and Health Administration's (OSHA) standard
4 29 CFR [1926.58] 1926.1101 (b). Such person shall also be a
5 certified asbestos abatement supervisor;

6 (25) "Conference, conciliation and persuasion", a process
7 of verbal or written communications consisting of meetings,
8 reports, correspondence or telephone conferences between
9 authorized representatives of the department and the alleged
10 violator. The process shall, at a minimum, consist of one offer
11 to meet with the alleged violator tendered by the department.
12 During any such meeting, the department and the alleged violator
13 shall negotiate in good faith to eliminate the alleged violation
14 and shall attempt to agree upon a plan to achieve compliance;

15 (26) "De minimis source", any air contaminant source with a
16 potential to emit an air contaminant, air cleaning devices not
17 considered, less than that established by the commission as de
18 minimis for the air contaminant;

19 (27) "Department", the department of natural resources of
20 the state of Missouri;

21 (28) "Director", the director of the department of natural
22 resources;

23 (29) "Emergency asbestos project", an asbestos project that
24 must be undertaken immediately to prevent imminent, severe, human
25 exposure or to restore essential facility operation;

26 (30) "Emission", the discharge or release into the
27 atmosphere of one or more air contaminants;

28 (31) "Emission control regulations", limitations on the

1 emission of air contaminants into the ambient air;

2 (32) "Friable [asbestos containing] asbestos-containing
3 material", any [asbestos containing material which is applied to
4 ceilings, walls, structural members, piping, ductwork or any
5 other part of a building or other air contaminant sources and
6 which, when dry, may be crumbled, pulverized or reduced to powder
7 by hand pressure] material containing more than one percent, as
8 determined by either the method specified in appendix E, section
9 1 Polarized Light Microscopy in 40 CFR Part 61, Subpart M or
10 EPA/600/R-93/116 Method for the Determination of Asbestos in Bulk
11 Building Materials, asbestos that, when dry, can be crumbled,
12 pulverized or reduced to powder by hand pressure;

13 (33) "Grinding", to reduce to powder or small fragments and
14 includes mechanical chipping or drilling;

15 [(33)] (34) "Inspector", an individual[, under AHERA,] who
16 collects and assimilates information used to determine whether
17 [asbestos containing] asbestos-containing material is present in
18 a building or other air contaminant sources;

19 [(34)] (35) "Management planner", an individual, under
20 AHERA, who devises and writes plans for asbestos abatement;

21 [(35)] (36) "Minor violation", a violation which possesses
22 a small potential to harm the environment or human health or
23 cause pollution, was not knowingly committed, and is not defined
24 by the United States Environmental Protection Agency as other
25 than minor;

26 [(36)] (37) "Nonattainment area", any area designated by
27 the governor as a "nonattainment area" as defined in the federal
28 Clean Air Act, as amended, 42 U.S.C. 7501;

1 (38) "Nonfriable asbestos-containing material", any
2 material containing more than one percent asbestos as determined
3 by either the method specified in appendix E, section 1 Polarized
4 Light Microscopy in 40 CFR Part 61, Subpart M or EPA/600/R-93/116
5 Method for the Determination of Asbestos in Bulk Building
6 Materials, that, when dry, cannot be crumbled, pulverized or
7 reduced to powder by hand pressure;

8 [(37)] (39) "Person", any individual, partnership,
9 copartnership, firm, company, or public or private corporation,
10 association, joint stock company, trust, estate, political
11 subdivision, or any agency, board, department, or bureau of the
12 state or federal government, or any other legal entity whatever
13 which is recognized by law as the subject of rights and duties;

14 [(38)] (40) "Regulated asbestos-containing material" or
15 "RACM":

16 (a) Friable asbestos-containing material;

17 (b) Category I nonfriable asbestos-containing material that
18 will be or has been subjected to sanding, grinding, cutting, or
19 abrading; or

20 (c) Category II nonfriable asbestos-containing material
21 that has a high probability of becoming or has become crumbled,
22 pulverized, or reduced to powder by the forces expected to act on
23 the material in the course of demolition or renovation
24 operations;

25 (41) "School district", seven-director districts, urban
26 school districts, and metropolitan school districts, as defined
27 in section 160.011;

28 (42) "Small business", for the purpose of sections 643.010

1 to [643.190] 643.355, a small business shall include any business
2 regulated under this chapter, which is not a class A source and
3 which employs less than one hundred people and emits less than
4 fifty tons of any regulated pollutant per year and less than
5 seventy-five tons of all regulated pollutants or as otherwise
6 defined by the commission by rule.

7 643.040. 1. There is created hereby an air pollution
8 control agency to be known as the "Air Conservation Commission of
9 the State of Missouri", whose domicile for the purposes of
10 sections 643.010 to [643.190] 643.355 is the department of
11 natural resources of the state of Missouri. The commission shall
12 consist of seven members appointed by the governor, with the
13 advice and consent of the senate. No more than four of the
14 members shall belong to the same political party and no two
15 members shall be a resident of and domiciled in the same
16 senatorial district. At the first meeting of the commission and
17 at yearly intervals thereafter, the members shall select from
18 among themselves a chairman and a vice chairman.

19 2. All members shall be representative of the general
20 interest of the public and shall have an interest in and
21 knowledge of air conservation and the effects and control of air
22 contaminants. At least three of such members shall represent
23 agricultural, industrial and labor interests, respectively. The
24 governor shall not appoint any other person who has a substantial
25 interest as defined in section 105.450 in any business entity
26 regulated under this chapter or any business entity which would
27 be regulated under this chapter if located in Missouri. The
28 commission shall establish rules of procedure which specify when

1 members shall exempt themselves from participating in discussions
2 and from voting on issues before the commission due to potential
3 conflict of interest.

4 3. The members' terms of office shall be four years and
5 until their successors are selected and qualified, except that
6 the terms of those first appointed shall be staggered to expire
7 at intervals of one, two and three years after the date of
8 appointment as designated by the governor at the time of
9 appointment. There is no limitation of the number of terms any
10 appointed member may serve. If a vacancy occurs the governor may
11 appoint a member for the remaining portion of the unexpired term
12 created by the vacancy. The governor may remove any appointed
13 member for cause. The members of the commission shall be
14 reimbursed for travel and other expenses actually and necessarily
15 incurred in the performance of their duties.

16 4. The commission shall hold at least nine regular meetings
17 each year and such additional regular meetings as the chairman
18 deems desirable at a place and time to be fixed by the chairman.
19 Special meetings may be called by three members of the commission
20 upon delivery of written notice to each member of the commission.
21 Reasonable written notice of all meetings shall be given to all
22 members of the commission. Four members of the commission shall
23 constitute a quorum. All powers and duties conferred upon
24 members of the commission shall be exercised personally by the
25 members and not by alternates or representatives. All actions of
26 the commission shall be taken at meetings open to the public,
27 except as provided in chapter 610. Any member absent from four
28 regular commission meetings per calendar year for any cause

1 whatsoever shall be deemed to have resigned and the vacancy shall
2 be filled immediately in accordance with subsection 1 and
3 subsection 3 of this section.

4 643.050. 1. In addition to any other powers vested in it
5 by law the commission shall have the following powers:

6 (1) Adopt, promulgate, amend and repeal rules and
7 regulations consistent with the general intent and purposes of
8 sections 643.010 to ~~[643.190]~~ 643.355, chapter 536, and Titles V
9 and VI of the federal Clean Air Act, as amended, 42 U.S.C. 7661,
10 et seq., including but not limited to:

11 (a) Regulation of use of equipment known to be a source of
12 air contamination;

13 (b) Establishment of maximum quantities of air contaminants
14 that may be emitted from any air contaminant source; and

15 (c) Regulations necessary to enforce the provisions of
16 Title VI of the Clean Air Act, as amended, 42 U.S.C. 7671, et
17 seq., regarding any Class I or Class II substances as defined
18 therein;

19 (2) After holding public hearings in accordance with
20 section 643.070, establish areas of the state and prescribe air
21 quality standards for such areas giving due recognition to
22 variations, if any, in the characteristics of different areas of
23 the state which may be deemed by the commission to be relevant;

24 (3) (a) To require persons engaged in operations which
25 result in air pollution to monitor or test emissions and to file
26 reports containing information relating to rate, period of
27 emission and composition of effluent;

28 (b) Require submission to the director for approval of

1 plans and specifications for any article, machine, equipment,
2 device, or other contrivance specified by regulation the use of
3 which may cause or control the issuance of air contaminants; but
4 any person responsible for complying with the standards
5 established under sections 643.010 to [643.190] 643.355 shall
6 determine, unless found by the director to be inadequate, the
7 means, methods, processes, equipment and operation to meet the
8 established standards;

9 (4) Hold hearings upon appeals from orders of the director
10 or from any other actions or determinations of the director
11 hereunder for which provision is made for appeal, and in
12 connection therewith, issue subpoenas requiring the attendance of
13 witnesses and the production of evidence reasonably relating to
14 the hearing;

15 (5) Enter such order or determination as may be necessary
16 to effectuate the purposes of sections 643.010 to [643.190]
17 643.355. In making its orders and determinations hereunder, the
18 commission shall exercise a sound discretion in weighing the
19 equities involved and the advantages and disadvantages to the
20 person involved and to those affected by air contaminants emitted
21 by such person as set out in section 643.030. If any small
22 business, as defined by section 643.020, requests information on
23 what would constitute compliance with the requirements of
24 sections 643.010 to [643.190] 643.355 or any order or
25 determination of the department or commission, the department
26 shall respond with written criteria to inform the small business
27 of the actions necessary for compliance. No enforcement action
28 shall be undertaken by the department or commission until the

1 small business has had a period of time, negotiated with the
2 department, to achieve compliance;

3 (6) Cause to be instituted in a court of competent
4 jurisdiction legal proceedings to compel compliance with any
5 final order or determination entered by the commission or the
6 director;

7 (7) Settle or compromise in its discretion, as it may deem
8 advantageous to the state, any suit for recovery of any penalty
9 or for compelling compliance with the provisions of any rule;

10 (8) Develop such facts and make such investigations as are
11 consistent with the purposes of sections 643.010 to [643.190]
12 643.355, and, in connection therewith, to enter or authorize any
13 representative of the department to enter at all reasonable times
14 and upon reasonable notice in or upon any private or public
15 property for the purpose of inspecting or investigating any
16 condition which the commission or director shall have probable
17 cause to believe to be an air contaminant source or upon any
18 private or public property having material information relevant
19 to said air contaminant source. The results of any such
20 investigation shall be reduced to writing, and a copy thereof
21 shall be furnished to the owner or operator of the property. No
22 person shall refuse entry or access, requested for purposes of
23 inspection under this provision, to an authorized representative
24 of the department who presents appropriate credentials, nor
25 obstruct or hamper the representative in carrying out the
26 inspection. A suitably restricted search warrant, upon a showing
27 of probable cause in writing and upon oath, shall be issued by
28 any judge having jurisdiction to any such representative for the

1 purpose of enabling him to make such inspection;

2 (9) Secure necessary scientific, technical, administrative
3 and operational services, including laboratory facilities, by
4 contract or otherwise, with any educational institution,
5 experiment station, or any board, department, or other agency of
6 any political subdivision or state or the federal government;

7 (10) Classify and identify air contaminants; and

8 (11) Hold public hearings as required by sections 643.010
9 to ~~[643.190]~~ 643.355.

10 2. No rule or portion of a rule promulgated under the
11 authority of this chapter shall become effective unless it has
12 been promulgated pursuant to the provisions of section 536.024.

13 3. The commission shall have the following duties with
14 respect to the prevention, abatement and control of air
15 pollution:

16 (1) Prepare and develop a general comprehensive plan for
17 the prevention, abatement and control of air pollution;

18 (2) Encourage voluntary cooperation by persons or affected
19 groups to achieve the purposes of sections 643.010 to ~~[643.190]~~
20 643.355;

21 (3) Encourage political subdivisions to handle air
22 pollution problems within their respective jurisdictions to the
23 extent possible and practicable and provide assistance to
24 political subdivisions;

25 (4) Encourage and conduct studies, investigations and
26 research;

27 (5) Collect and disseminate information and conduct
28 education and training programs;

1 (6) Advise, consult and cooperate with other agencies of
2 the state, political subdivisions, industries, other states and
3 the federal government, and with interested persons or groups;

4 (7) Represent the state of Missouri in all matters
5 pertaining to interstate air pollution including the negotiations
6 of interstate compacts or agreements.

7 4. Nothing contained in sections 643.010 to [643.190]
8 643.355 shall be deemed to grant to the commission or department
9 any jurisdiction or authority with respect to air pollution
10 existing solely within commercial and industrial plants, works,
11 or shops or to affect any aspect of employer-employee
12 relationships as to health and safety hazards.

13 5. Any information relating to secret processes or methods
14 of manufacture or production discovered through any communication
15 required under this section shall be kept confidential.

16 643.060. In addition to any other powers vested by law, the
17 director shall have the following powers and duties:

18 (1) Retain, employ, provide for, and compensate, within
19 appropriations available therefor, such consultants, assistants,
20 deputies, clerks, and other employees on a full- or part-time
21 basis as may be necessary to carry out the provisions of sections
22 643.010 to [643.190] 643.355 and prescribe the times at which
23 they shall be appointed and their powers and duties;

24 (2) Accept, receive and administer grants or other funds or
25 gifts from public and private agencies including the federal
26 government for the purpose of carrying out any of the functions
27 of sections 643.010 to [643.190] 643.355. The director shall
28 apply for all available grants and funds authorized and

1 distributed pursuant to Title XI of the federal Clean Air Act, as
2 amended, 29 U.S.C. 1662e, for training, assistance and payments
3 to eligible individuals. The director shall report annually to
4 the governor and the general assembly, the amount of revenue
5 received under Title XI of the Clean Air Act and the distribution
6 of such funds to eligible persons. Funds received by the
7 director pursuant to this section shall be deposited with the
8 state treasurer and held and disbursed by him in accordance with
9 the appropriations of the general assembly. The director is
10 authorized to enter into contracts as he may deem necessary for
11 carrying out the provisions of sections 643.010 to [643.190]
12 643.355;

13 (3) Budget and receive duly appropriated moneys for
14 expenditures to carry out the provisions and purposes of sections
15 643.010 to [643.190] 643.355;

16 (4) Administer and enforce sections 643.010 to [643.190]
17 643.355, investigate complaints, issue orders and take all
18 actions necessary to implement sections 643.010 to [643.190]
19 643.355;

20 (5) Receive and act upon reports, plans, specifications and
21 applications submitted under rules promulgated by the commission.
22 Any person aggrieved by any action of the director under this
23 provision shall be entitled to a hearing before the commission as
24 provided in section 643.080. The commission may sustain,
25 reverse, or modify any action of the director taken under this
26 provision, or make such other order as the commission shall deem
27 appropriate under the circumstances.

28 643.079. 1. Any air contaminant source required to obtain

1 a permit issued under sections 643.010 to ~~[643.190]~~ 643.355 shall
2 pay annually beginning April 1, 1993, a fee as provided herein.
3 For the first year the fee shall be twenty-five dollars per ton
4 of each regulated air contaminant emitted. Thereafter, the fee
5 shall be set every three years by the commission by rule and
6 shall be at least twenty-five dollars per ton of regulated air
7 contaminant emitted but not more than forty dollars per ton of
8 regulated air contaminant emitted in the previous calendar year.
9 If necessary, the commission may make annual adjustments to the
10 fee by rule. The fee shall be set at an amount consistent with
11 the need to fund the reasonable cost of administering sections
12 643.010 to ~~[643.190]~~ 643.355, taking into account other moneys
13 received pursuant to sections 643.010 to ~~[643.190]~~ 643.355. For
14 the purpose of determining the amount of air contaminant
15 emissions on which the fees authorized under this section are
16 assessed, a facility shall be considered one source under the
17 definition of subsection 2 of section 643.078, except that a
18 facility with multiple operating permits shall pay the emission
19 fees authorized under this section separately for air
20 contaminants emitted under each individual permit.

21 2. A source which produces charcoal from wood shall pay an
22 annual emission fee under this subsection in lieu of the fee
23 established in subsection 1 of this section. The fee shall be
24 based upon a maximum fee of twenty-five dollars per ton and
25 applied upon each ton of regulated air contaminant emitted for
26 the first four thousand tons of each contaminant emitted in the
27 amount established by the commission pursuant to subsection 1 of
28 this section, reduced according to the following schedule:

1 (1) For fees payable under this subsection in the years
2 1993 and 1994, the fee shall be reduced by one hundred percent;

3 (2) For fees payable under this subsection in the years
4 1995, 1996 and 1997, the fee shall be reduced by eighty percent;

5 (3) For fees payable under this subsection in the years
6 1998, 1999 and 2000, the fee shall be reduced by sixty percent.

7 3. The fees imposed in subsection 2 of this section shall
8 not be imposed or collected after the year 2000 unless the
9 general assembly reimposes the fee.

10 4. Each air contaminant source with a permit issued under
11 sections 643.010 to ~~[643.190]~~ 643.355 shall pay the fee for the
12 first four thousand tons of each regulated air contaminant
13 emitted each year but no air contaminant source shall pay fees on
14 total emissions of regulated air contaminants in excess of twelve
15 thousand tons in any calendar year. A permitted air contaminant
16 source which emitted less than one ton of all regulated
17 pollutants shall pay a fee equal to the amount per ton set by the
18 commission. An air contaminant source which pays emission fees
19 to a holder of a certificate of authority issued pursuant to
20 section 643.140 may deduct such fees from any amount due under
21 this section. The fees imposed in this section shall not be
22 applied to carbon oxide emissions. The fees imposed in
23 subsection 1 and this subsection shall not be applied to sulfur
24 dioxide emissions from any Phase I affected unit subject to the
25 requirements of Title IV, Section 404, of the federal Clean Air
26 Act, as amended, 42 U.S.C. 7651, et seq., any sooner than January
27 1, 2000. The fees imposed on emissions from Phase I affected
28 units shall be consistent with and shall not exceed the

1 provisions of the federal Clean Air Act, as amended, and the
2 regulations promulgated thereunder. Any such fee on emissions
3 from any Phase I affected unit shall be reduced by the amount of
4 the service fee paid by that Phase I affected unit pursuant to
5 subsection 8 of this section in that year. Any fees that may be
6 imposed on Phase I sources shall follow the procedures set forth
7 in subsection 1 and this subsection and shall not be applied
8 retroactively.

9 5. Moneys collected under this section shall be transmitted
10 to the director of revenue for deposit in appropriate subaccounts
11 of the natural resources protection fund created in section
12 640.220. A subaccount shall be maintained for fees paid by air
13 contaminant sources which are required to be permitted under
14 Title V of the federal Clean Air Act, as amended, 42 U.S.C.
15 Section 7661, et seq., and used, upon appropriation, to fund
16 activities by the department to implement the operating permits
17 program authorized by Title V of the federal Clean Air Act, as
18 amended. Another subaccount shall be maintained for fees paid by
19 air contaminant sources which are not required to be permitted
20 under Title V of the federal Clean Air Act as amended, and used,
21 upon appropriation, to fund other air pollution control program
22 activities. Another subaccount shall be maintained for service
23 fees paid under subsection 8 of this section by Phase I affected
24 units which are subject to the requirements of Title IV, Section
25 404, of the federal Clean Air Act Amendments of 1990, as amended,
26 42 U.S.C. 7651, and used, upon appropriation, to fund air
27 pollution control program activities. The provisions of section
28 33.080 to the contrary notwithstanding, moneys in the fund shall

1 not revert to general revenue at the end of each biennium.
2 Interest earned by moneys in the subaccounts shall be retained in
3 the subaccounts. The per-ton fees established under subsection 1
4 of this section may be adjusted annually, consistent with the
5 need to fund the reasonable costs of the program, but shall not
6 be less than twenty-five dollars per ton of regulated air
7 contaminant nor more than forty dollars per ton of regulated air
8 contaminant. The first adjustment shall apply to moneys payable
9 on April 1, 1994, and shall be based upon the general price level
10 for the twelve-month period ending on August thirty-first of the
11 previous calendar year.

12 6. The department may initiate a civil action in circuit
13 court against any air contaminant source which has not remitted
14 the appropriate fees within thirty days. In any judgment against
15 the source, the department shall be awarded interest at a rate
16 determined pursuant to section 408.030 and reasonable attorney's
17 fees. In any judgment against the department, the source shall
18 be awarded reasonable attorney's fees.

19 7. The department shall not suspend or revoke a permit for
20 an air contaminant source solely because the source has not
21 submitted the fees pursuant to this section.

22 8. Any Phase I affected unit which is subject to the
23 requirements of Title IV, Section 404, of the federal Clean Air
24 Act, as amended, 42 U.S.C. 7651, shall pay annually beginning
25 April 1, 1993, and terminating December 31, 1999, a service fee
26 for the previous calendar year as provided herein. For the first
27 year, the service fee shall be twenty-five thousand dollars for
28 each Phase I affected generating unit to help fund the

1 administration of sections 643.010 to ~~643.190~~ 643.355.
2 Thereafter, the service fee shall be annually set by the
3 commission by rule, following public hearing, based on an annual
4 allocation prepared by the department showing the details of all
5 costs and expenses upon which such fees are based consistent with
6 the department's reasonable needs to administer and implement
7 sections 643.010 to ~~643.190~~ 643.355 and to fulfill its
8 responsibilities with respect to Phase I affected units, but such
9 service fee shall not exceed twenty-five thousand dollars per
10 generating unit. Any such Phase I affected unit which is located
11 on one or more contiguous tracts of land with any Phase II
12 generating unit that pays fees under subsection 1 or subsection 2
13 of this section shall be exempt from paying service fees under
14 this subsection. A "contiguous tract of land" shall be defined
15 to mean adjacent land, excluding public roads, highways and
16 railroads, which is under the control of or owned by the permit
17 holder and operated as a single enterprise.

18 9. The department of natural resources shall determine the
19 fees due pursuant to this section by the state of Missouri and
20 its departments, agencies and institutions, including two- and
21 four-year institutions of higher education. The director of the
22 department of natural resources shall forward the various totals
23 due to the joint committee on capital improvements and the
24 directors of the individual departments, agencies and
25 institutions. The departments, as part of the budget process,
26 shall annually request by specific line item appropriation funds
27 to pay said fees and capital funding for projects determined to
28 significantly improve air quality. If the general assembly fails

1 to appropriate funds for emissions fees as specifically
2 requested, the departments, agencies and institutions shall pay
3 said fees from other sources of revenue or funds available. The
4 state of Missouri and its departments, agencies and institutions
5 may receive assistance from the small business technical
6 assistance program established pursuant to section 643.173.

7 643.080. 1. The director shall investigate alleged
8 violations of sections 643.010 to [643.190] 643.355 or any rule
9 promulgated hereunder or any term or condition of any permit and
10 may cause to be made such other investigations as he shall deem
11 advisable. The department shall assume the costs of
12 investigation of alleged violations. The identity of the person
13 who filed the complaint shall be made available consistent with
14 chapter 610 and other provisions, as applicable.

15 2. If, in the opinion of the director, the investigation
16 yields reasonable grounds to believe that a violation of [section
17 577.200] sections 643.010 to 643.355 is occurring or has
18 occurred, he shall refer such information to either or both the
19 attorney general or the county prosecutor of the county where the
20 violations are alleged to have occurred.

21 3. If, in the opinion of the director, the investigation
22 discloses that a violation does exist which would not be a
23 criminal violation, he may by conference, conciliation and
24 persuasion endeavor to eliminate the violation.

25 4. In case of the failure by conference, conciliation and
26 persuasion to correct or remedy any violation, the director may
27 order abatement, suspend or revoke a permit, whichever action or
28 actions the director deems appropriate. The director shall cause

1 to have issued and served upon the person a written notice of
2 such order together with a copy of the order, which shall specify
3 the provisions of sections 643.010 to ~~643.190~~ 643.355 or the
4 rule or the condition of the permit of which the person is
5 alleged to be in violation, and a statement of the manner in, and
6 the extent to which the person is alleged to be in violation.
7 Service may be made upon any person within or without the state
8 by registered mail, return receipt requested. Any person against
9 whom the director issues an order may appeal the order to the
10 commission within thirty days, and the appeal shall stay the
11 enforcement of such order until final determination by the
12 commission. The commission shall set a hearing on a day not less
13 than thirty days after the date of the request. The commission
14 may sustain, reverse, or modify the director's order, or make
15 such other order as the commission deems appropriate under the
16 circumstances. If any order issued by the director is not
17 appealed within the time herein provided, the order becomes final
18 and may be enforced as provided in section 643.151.

19 5. When the commission schedules a matter for hearing, the
20 petitioner on appeal may appear at the hearing in person or by
21 counsel, and may make oral argument, offer testimony and evidence
22 or cross-examine witnesses.

23 6. After due consideration of the record, or upon default
24 in appearance of the petitioner on the return day specified in
25 the notice given as provided in subsection 4 of this section, the
26 commission shall issue and enter the final order, or make such
27 final determination as it shall deem appropriate under the
28 circumstances, and it shall immediately notify the petitioner or

1 respondent thereof in writing by certified or registered mail.

2 7. Any final order or determination or other final action
3 by the commission shall be approved in writing by at least four
4 members of the commission.

5 643.130. All final orders or determinations of the
6 commission or the director hereunder shall be subject to judicial
7 review pursuant to the provisions of sections 536.100 to 536.140,
8 except that, the provisions of section 536.110 notwithstanding,
9 all actions seeking judicial review of any final determination of
10 the commission or the director shall be filed in the court of
11 appeals instead of in the circuit court. No judicial review shall
12 be available hereunder, however, unless and until all
13 administrative remedies are exhausted.

14 643.191. 1. It is unlawful for any person to knowingly
15 violate any applicable standard, limitation, permit condition or
16 any fee or filing requirement promulgated pursuant to sections
17 643.010 to [643.190] 643.355 or any rule promulgated thereunder.
18 Any person violating the provisions of this subsection shall,
19 upon conviction thereof, be subject to a fine of not more than
20 ten thousand dollars per day of violation or part thereof.

21 2. It is unlawful for any person to knowingly make a false
22 statement, representation or certification in any form, in any
23 notice or report required by a permit or to knowingly render
24 inaccurate any monitoring device or method required to be
25 maintained by the permitting authority under sections 643.010 to
26 [643.190] 643.355. Any person violating the provisions of this
27 subsection shall, upon conviction thereof, be subject to a fine
28 of not more than ten thousand dollars for each instance of

1 violation.

2 643.225. 1. The provisions of sections 643.225 to 643.250
3 shall apply to all [asbestos abatement] projects subject to 40
4 CFR Part 61, Subpart M as adopted by 10 CSR 10-6.080. The
5 commission shall promulgate rules and regulations it deems
6 necessary to implement and administer the provisions of sections
7 643.225 to 643.250, including requirements, procedures and
8 standards relating to asbestos projects, as well as the authority
9 to require corrective measures to be taken in asbestos abatement,
10 renovation, or demolition projects as are deemed necessary to
11 protect public health and the environment. The director shall
12 establish any examinations for certification required by this
13 section and shall hold such examinations at times and places as
14 determined by the director.

15 2. Except as otherwise provided in sections 643.225 to
16 643.250, no individual shall engage in an asbestos abatement
17 project, inspection, management plan, abatement project design or
18 asbestos air sampling unless the person has been issued a
19 certificate by the director, or by the commission after appeal,
20 for that purpose.

21 3. In any application made to the director to obtain such
22 certification as an inspector, management planner, abatement
23 project designer, supervisor, contractor or worker from the
24 department, the applicant shall include his diploma providing
25 proof of successful completion of either a state accredited or
26 United States Environmental Protection Agency (EPA) accredited
27 training course as described in section 643.228. In addition, an
28 applicant for certification as a management planner shall first

1 be certified as an inspector. All applicants for certification
2 as an inspector, management planner, abatement project designer,
3 supervisor, contractor or worker shall successfully pass a state
4 examination on Missouri state asbestos statutes and rules
5 relating to asbestos. Certification issued hereunder shall
6 expire one year from its effective date. Individuals applying
7 for state certification as an asbestos air sampling professional
8 shall have the following credentials:

9 (1) A bachelor of science degree in industrial hygiene plus
10 one year of experience in the field; or

11 (2) A master of science degree in industrial hygiene; or

12 (3) Certification as an industrial hygienist as designated
13 by the American Board of Industrial Hygiene; or

14 (4) Three years of practical experience in the field of
15 industrial hygiene, including significant asbestos air monitoring
16 experience and the completion of a forty-hour asbestos course
17 which includes air monitoring instruction (National Institute of
18 Occupational Safety and Health 582 course on air sampling or
19 equivalent). In addition to these qualifications, the individual
20 must also pass the state of Missouri asbestos examination. All
21 asbestos air sampling technicians shall be trained and overseen
22 by an asbestos air sampling professional and shall meet the
23 requirements of training found in OSHA's 29 CFR [1926.58]
24 1926.1101. Certification under this section as an [AHERA
25 asbestos] abatement project designer does not qualify an
26 individual as an architect, engineer or land surveyor, as defined
27 in chapter 327.

28 4. An application fee of seventy-five dollars shall be

1 assessed for each category, except asbestos abatement worker, to
2 cover administrative costs incurred. An application fee of
3 twenty-five dollars shall be assessed for each asbestos abatement
4 worker to cover administrative costs incurred. A fee of
5 twenty-five dollars shall be assessed per state examination.

6 5. In order to qualify for renewal of a certificate, an
7 individual shall have successfully completed an annual refresher
8 course from [an Environmental Protection Agency or] a state of
9 Missouri accredited training program. For each discipline, the
10 refresher course shall review and discuss current federal and
11 state statute and rule developments, state-of-the-art procedures
12 and key aspects of the initial training course, as determined by
13 the state of Missouri. For all categories except inspectors,
14 individuals shall complete a one-day annual refresher training
15 course for recertification. Refresher courses for inspectors
16 shall be at least a half-day in length. Management planners
17 shall attend the inspector refresher course, plus an additional
18 half-day on management planning. All refresher courses shall
19 require an individual to successfully pass an examination upon
20 completion of the course. In the case of significant changes in
21 Missouri state asbestos statutes or rules, an individual shall
22 also be required to take and successfully pass an updated
23 Missouri state asbestos examination. An individual who has
24 failed the Missouri state asbestos examination may retake it on
25 the next scheduled examination date. If [his certification has
26 lapsed for more than twenty-four months, he] an individual has
27 not successfully completed the annual refresher course within
28 twelve months of the expiration of his or her certification, the

1 individual shall be required to retake the course in his or her
2 specialty area as described in this section. Failure to comply
3 with the requirements for renewal of certification in this
4 section will result in decertification. In no event shall
5 certification or recertification constitute permission to violate
6 sections 643.225 to 643.250 or any standard or rule promulgated
7 under sections 643.225 to 643.250.

8 6. A fee of five dollars shall be paid to the state for
9 renewal of certificates to cover administrative costs.

10 [7. The provisions of subsections 2 through 6 of this
11 section, section 643.228, subdivision (4) of subsection 1 of
12 section 643.230, sections 643.232 and 643.235, subdivisions (1)
13 to (3) of subsection 1 of section 643.237, and subsection 2 of
14 section 643.237 shall not apply to a person that is subject to
15 requirements and applicable standards of the United States
16 Environmental Protection Agency (EPA) and the United States
17 Occupational Safety and Health Administration's (OSHA) 29 Code of
18 Federal Regulations 1926.58 and which engages in asbestos
19 abatement projects as part of normal operations in the facility
20 solely at its own place or places of business. A person shall
21 receive an exemption upon submitting to the director, on a form
22 provided by the department, documentation of the training
23 provided to their employees to meet the requirements of
24 applicable OSHA and EPA rules and regulations and the type of
25 asbestos abatement projects which constitute normal operations
26 performed by the applicant. If the application does not meet the
27 requirements of this subsection and the rules and regulations
28 promulgated by the department, the applicant shall be notified,

1 within one hundred eighty days of the receipt of the application,
2 that his exemption has been revoked. An applicant may appeal the
3 revocation of an exemption to the commission within thirty days
4 of the notice of revocation. This exemption shall not apply to
5 asbestos abatement contractors, to those persons who the
6 commission by rule determines provide a service to the public in
7 its place or places of business as the economic foundation of the
8 facility, or to those persons subject to the requirements of the
9 federal Asbestos Hazard Emergency Response Act of 1986 (P.L.
10 99-519). A representative of the department shall be permitted
11 to attend, monitor and evaluate any training program provided by
12 the exempted person. Such evaluations may be conducted without
13 prior notice. Refusal to allow such an evaluation is sufficient
14 grounds for loss of exemption status.

15 8. A fee of two hundred fifty dollars shall be submitted
16 with the application for exemption. This is a one-time fee.
17 Exempted persons shall submit to the director changes in
18 curricula or other significant revisions to the training program
19 as they occur.]

20 643.232. 1. All asbestos abatement contractors prior to
21 engaging in asbestos abatement projects shall:

22 (1) Register with the department and reregister annually as
23 provided by rule;

24 (2) Submit an application for registration on a form
25 developed by the department;

26 (3) Use only those individuals that have been certified or
27 trained in accordance with sections 643.225 to 643.250.

28 2. During asbestos abatement projects, all contractors

1 shall:

2 (1) Comply with applicable United States Environmental
3 Protection Agency regulations and guidelines, the standards for
4 worker protection promulgated by the United States Occupational
5 Safety and Health Administration in 29 CFR 1910.1001, 1910.1200
6 and ~~[1926.58]~~ 1926.1101, the provisions of sections 643.225 to
7 643.250 and the rules and regulations promulgated thereunder. It
8 is not intended that the director shall enforce OSHA requirements
9 but shall have the authority to deny, revoke, or suspend
10 registration on the basis of finding of violation by OSHA;

11 (2) Ensure that a competent person be on the asbestos
12 abatement project site directing all aspects of the project
13 during the hours that the project is being conducted.

14 3. A registration fee of one thousand dollars shall be paid
15 by the person to the state prior to registration.

16 643.237. 1. Any person undertaking an asbestos abatement
17 project of a magnitude greater than or equal to one hundred sixty
18 square feet ~~[or]~~, two hundred sixty linear feet, or thirty-five
19 cubic feet or regulated demolition project shall meet the
20 following requirements:

21 (1) The person shall submit an application for asbestos
22 abatement or demolition to the department for review at least
23 ~~[twenty]~~ ten working days in advance. The application shall be
24 in the form required by the department and shall include a copy
25 of an asbestos inspection survey which includes but is not
26 limited to sample analysis results, quantities of asbestos
27 materials identified, and documentation the inspection was
28 conducted by a certified asbestos inspector. Such application

1 shall include the name and address of the applicant, a
2 description of the proposed project and any other information as
3 may be required by the commission and provide proof to the
4 department that all employees engaged in an asbestos abatement
5 project are in compliance with sections 643.225 and 643.228;

6 (2) Persons undertaking an asbestos abatement project shall
7 notify the department within sixty days of the completion of the
8 project in the form required by the department;

9 (3) Persons undertaking an emergency asbestos abatement
10 project of this magnitude shall submit a notification to the
11 department within twenty-four hours of the onset of the
12 emergency. An application for permit to abate shall be submitted
13 to the department within seven days of the onset of the
14 emergency;

15 (4) A fee of one hundred dollars shall be paid for review
16 of each demolition or asbestos abatement project notification of
17 this magnitude;

18 (5) Any person undertaking an asbestos abatement or
19 demolition project in the jurisdiction of an authorized local air
20 pollution control agency shall be exempt from an application fee
21 if the authorized local agency also imposes an application fee.

22 2. [Any person undertaking an asbestos abatement project of
23 a magnitude less than one hundred sixty square feet or two
24 hundred sixty linear feet, but greater than ten square feet or
25 sixteen linear feet shall meet the following requirements:

26 (1) The person shall submit notification to the department
27 for review at least twenty days in advance. The notification
28 shall be in the form required by the department. Such

1 notification shall include the name and address of the applicant,
2 a description of the proposed project and any other information
3 as may be required by the department and provide proof to the
4 department that all employees engaged in an asbestos abatement
5 project are in compliance with sections 643.225 and 643.228. In
6 addition, the person shall post for inspection, at the site,
7 current certificates of all individuals engaged in the asbestos
8 abatement project as well as proof of the person's current
9 registration;

10 (2) Persons undertaking an asbestos abatement project shall
11 notify the department within sixty days of the completion of the
12 project in the form required by the department;

13 (3) Persons undertaking an emergency asbestos abatement
14 project of this magnitude shall submit notification to the
15 department within twenty-four hours of the onset of the
16 emergency.

17 3.] Any person who submits an asbestos abatement or
18 demolition project notification to the department shall submit
19 actual project dates and times for his project. If the dates and
20 times are revised on this project as submitted to the department,
21 the person is responsible to notify the department at least
22 twenty-four hours prior to the original starting date of the
23 project by telephone and then followup with a written amendment
24 stating the change in date and time. If the person does not
25 comply with this procedure, he shall be held in violation of the
26 notification requirements found in this section. This
27 requirement does not change the reporting requirements for
28 notification, post notification and emergency projects specified

1 in this section.

2 643.240. 1. Before commencement of an asbestos abatement
3 project, persons shall make all reasonable efforts to minimize
4 the spread of friable asbestos-containing materials to
5 uncontaminated areas.

6 2. Any asbestos-containing material that will be rendered
7 friable during the process of removal, encapsulation, enclosure
8 or demolition is subject to all applicable federal and state
9 regulations.

10 3. Analysis of asbestos air samples shall be conducted
11 according to the United States Occupational Safety and Health
12 Administration's (OSHA) standards in 29 CFR [1926.58] 1926.1101
13 or the United States Environmental Protection Agency standards in
14 40 CFR Part 763, Subpart E.

15 643.242. 1. Asbestos abatement projects of a magnitude
16 greater than or equal to [ten] one hundred sixty square feet or
17 [sixteen] two hundred sixty linear feet or thirty-five cubic feet
18 or all regulated demolition projects are subject to inspection.

19 2. The commission shall be authorized to assess a fee of
20 not more than one hundred dollars for each on-site inspection of
21 an asbestos abatement [projects] or demolition project. Such
22 fees would not be assessed for more than three on-site
23 inspections during the period an actual abatement project is in
24 progress. Failure of the asbestos abatement contractor to notify
25 the department of project postponement may result in the
26 assessment of an inspection fee in the event of an on-site visit
27 by the department.

28 3. Any person undertaking an asbestos abatement project or

1 regulated demolition project in the jurisdiction of an authorized
2 local air pollution control agency shall be exempt from an
3 inspection fee if the authorized local agency also imposes an
4 inspection fee.

5 643.245. 1. All moneys received pursuant to sections
6 643.225 to ~~[643.250]~~ 643.245 and any other moneys so designated
7 shall be placed in the state treasury and credited to the
8 "Natural Resources Protection Fund -- Air Pollution Asbestos Fee
9 Subaccount", which is hereby created. Such moneys received
10 pursuant to sections 643.225 to ~~[643.250]~~ 643.245 shall, subject
11 to appropriation, be used solely for the purpose of administering
12 this chapter. Any unexpended balance in such fund at the end of
13 any appropriation period shall not be transferred to the general
14 revenue fund of the state treasury and shall be exempt from the
15 provisions of section 33.080.

16 2. The state treasurer, with the approval of the board of
17 fund commissioners, is authorized to deposit all of the moneys in
18 any of the qualified state depositories. All such deposits shall
19 be secured in such manner and shall be made upon such terms and
20 conditions as are now and may hereafter be approved by law
21 relative to state deposits. Any interest received on such
22 deposits shall be credited to the natural resources protection
23 fund -- air pollution asbestos fee subaccount.

24 643.250. 1. Any authorized representative of the
25 department may enter at all reasonable times, in or upon public
26 or private property for purposes required under sections 643.225
27 to 643.250. In addition to any other remedy provided by law,
28 refusal to allow such entry shall be grounds for revocation of

1 registration or injunctive relief.

2 2. Any person who knowingly violates sections 643.225 to
3 643.250, or any rule promulgated thereunder, shall, upon
4 conviction, be punished by a fine of not less than twenty-five
5 hundred dollars nor more than twenty-five thousand dollars per
6 day of violation, or by imprisonment for not more than one year,
7 or both. Second and successive convictions of any person shall
8 be punished by a fine of not more than fifty thousand dollars per
9 day of violation, or by imprisonment for not more than two years,
10 or both.

11 3. Any person who violates any provision of sections
12 643.225 to 643.250 may, in addition to any other penalty provided
13 by law, incur a civil penalty in an amount not to exceed ten
14 thousand dollars for each day of violation. The civil penalty
15 shall be in an amount to constitute an actual and substantial
16 economic deterrent to the violation for which the civil penalty
17 is assessed. [Any civil penalty paid shall be placed in the
18 natural resources protection fund -- air pollution asbestos fee
19 subaccount.]

20 4. Notwithstanding the existence or pursuit of any other
21 remedy provided by sections 643.225 to 643.250, the commission
22 may maintain, in the manner provided by chapter 536, an action in
23 the name of the state of Missouri for injunction or other process
24 against any person to restrain or prevent any violation of the
25 provisions of sections 643.225 to 643.250.

26 644.036. 1. No standard, rule or regulation or any
27 amendment or repeal thereof shall be adopted except after a
28 public hearing to be held after thirty days' prior notice by

1 advertisement of the date, time and place of the hearing and
2 opportunity given to the public to be heard. Notice of the
3 hearings and copies of the proposed standard, rule or regulation
4 or any amendment or repeal thereof shall also be given by regular
5 mail, at least thirty days prior to the scheduled date of the
6 hearing, to any person who has registered with the director for
7 the purpose of receiving notice of such public hearings in
8 accordance with the procedures prescribed by the commission at
9 least forty-five days prior to the scheduled date of the hearing.
10 However, this provision shall not preclude necessary changes
11 during this thirty-day period.

12 2. At the hearing, opportunity to be heard by the
13 commission with respect to the subject thereof shall be afforded
14 any interested person upon written request to the commission,
15 addressed to the director, not later than seven days prior to the
16 hearing, and may be afforded to other persons if convenient. In
17 addition, any interested persons, whether or not heard, may
18 submit, within seven days subsequent to the hearings, a written
19 statement of their views. The commission may solicit the views,
20 in writing, of persons who may be affected by, or interested in,
21 proposed rules and regulations, or standards. Any person heard
22 or represented at the hearing or making written request for
23 notice shall be given written notice of the action of the
24 commission with respect to the subject thereof.

25 3. Any standard, rule or regulation or amendment or repeal
26 thereof shall not be deemed adopted or in force and effect until
27 it has been approved in writing by at least four members of the
28 commission. A standard, rule or regulation or an amendment or

1 repeal thereof shall not become effective until a certified copy
2 thereof has been filed with the secretary of state as provided in
3 chapter 536.

4 4. Unless prohibited by any federal water pollution control
5 act, any standard, rule or regulation or any amendment or repeal
6 thereof which is adopted by the commission may differ in its
7 terms and provisions as between particular types and conditions
8 of water quality standards or of water contaminants, as between
9 particular classes of water contaminant sources, and as between
10 particular waters of the state.

11 5. Any listing required by Section 303(d) of the federal
12 Clean Water Act, as amended, 33 U.S.C. 1251, et seq., to be sent
13 to the U.S. Environmental Protection Agency for its approval
14 that will result in any waters of the state being classified as
15 impaired shall be adopted by the commission after a public
16 hearing, or series of hearings, held in accordance with the
17 following procedures. The department of natural resources shall
18 publish in at least six regional newspapers, in advance, a notice
19 by advertisement the availability of a proposed list of impaired
20 waters of the state and such notice shall include at least ninety
21 days' advance notice of the date, time, and place of the public
22 hearing and opportunity given to the public to be heard. Notice
23 of the hearings and copies of the proposed list of impaired
24 waters also shall be posted on the department of natural
25 resources' website and given by regular mail, at least ninety
26 days prior to the scheduled date of the hearing, to any person
27 who has registered with the director for the purpose of receiving
28 notice of such public hearings. The proposed list of impaired

1 waters shall identify the water segment, the uses to be made of
2 such waters, the uses impaired, identify the pollutants causing
3 or expected to cause violations of the applicable water quality
4 standards, and provide a summary of the data relied upon to make
5 the preliminary determination. Contemporaneous with the
6 publication of the notice of public hearing, the department shall
7 make available on its website all data and information it relied
8 upon to prepare the proposed list of impaired waters, including a
9 narrative explanation of how the department determined the water
10 segment was impaired. At any time after the public notice and
11 until seven days after the public hearing, the department shall
12 accept written comments on the proposed list of impaired waters.
13 After the public hearing and after all written comments have been
14 submitted, the department shall prepare a written response to all
15 comments and a revised list of impaired waters. The commission
16 shall adopt a list of impaired waters in a public meeting during
17 which the public shall be afforded an opportunity to respond to
18 the department's written response to comments and revised list of
19 impaired waters. Notice of the meeting shall include the date,
20 time, and place of the public meeting and shall provide notice
21 that the commission will give interested persons the opportunity
22 to respond to the department's revised list of impaired waters
23 and written responses to comments. At its discretion, the
24 commission may extend public comment periods or hold additional
25 public hearings on the proposed and revised lists of impaired
26 waters. The commission shall not vote to add to the list of
27 impaired waters any waters not recommended by the department in
28 the proposed or revised lists of impaired waters without granting

1 the public at least thirty additional days to comment on the
2 proposed addition. The list of impaired waters adopted by the
3 commission shall not be deemed to be a rule as defined by section
4 536.010. The listing of any water segment on the list of
5 impaired waters adopted by the commission shall be subject to
6 judicial review by any adversely affected party under section
7 536.150. [The provisions in this subsection shall expire on
8 August 28, 2010.]

9 644.051. 1. It is unlawful for any person:

10 (1) To cause pollution of any waters of the state or to
11 place or cause or permit to be placed any water contaminant in a
12 location where it is reasonably certain to cause pollution of any
13 waters of the state;

14 (2) To discharge any water contaminants into any waters of
15 the state which reduce the quality of such waters below the water
16 quality standards established by the commission;

17 (3) To violate any pretreatment and toxic material control
18 regulations, or to discharge any water contaminants into any
19 waters of the state which exceed effluent regulations or permit
20 provisions as established by the commission or required by any
21 federal water pollution control act;

22 (4) To discharge any radiological, chemical, or biological
23 warfare agent or high-level radioactive waste into the waters of
24 the state.

25 2. It shall be unlawful for any person to build, erect,
26 alter, replace, operate, use or maintain any water contaminant or
27 point source in this state that is subject to standards, rules or
28 regulations promulgated pursuant to the provisions of sections

1 644.006 to 644.141 unless such person holds a permit from the
2 commission, subject to such exceptions as the commission may
3 prescribe by rule or regulation. However, no permit shall be
4 required of any person for any emission into publicly owned
5 treatment facilities or into publicly owned sewer systems
6 tributary to publicly owned treatment works.

7 3. Every proposed water contaminant or point source which,
8 when constructed or installed or established, will be subject to
9 any federal water pollution control act or sections 644.006 to
10 644.141 or regulations promulgated pursuant to the provisions of
11 such act shall make application to the director for a permit at
12 least thirty days prior to the initiation of construction or
13 installation or establishment. Every water contaminant or point
14 source in existence when regulations or sections 644.006 to
15 644.141 become effective shall make application to the director
16 for a permit within sixty days after the regulations or sections
17 644.006 to 644.141 become effective, whichever shall be earlier.
18 The director shall promptly investigate each application, which
19 investigation shall include such hearings and notice, and
20 consideration of such comments and recommendations as required by
21 sections 644.006 to 644.141 and any federal water pollution
22 control act. If the director determines that the source meets or
23 will meet the requirements of sections 644.006 to 644.141 and the
24 regulations promulgated pursuant thereto, the director shall
25 issue a permit with such conditions as he or she deems necessary
26 to ensure that the source will meet the requirements of sections
27 644.006 to 644.141 and any federal water pollution control act as
28 it applies to sources in this state. If the director determines

1 that the source does not meet or will not meet the requirements
2 of either act and the regulations pursuant thereto, the director
3 shall deny the permit pursuant to the applicable act and issue
4 any notices required by sections 644.006 to 644.141 and any
5 federal water pollution control act.

6 4. Before issuing a permit to build or enlarge a water
7 contaminant or point source or reissuing any permit, the director
8 shall issue such notices, conduct such hearings, and consider
9 such factors, comments and recommendations as required by
10 sections 644.006 to 644.141 or any federal water pollution
11 control act. The director shall determine if any state or any
12 provisions of any federal water pollution control act the state
13 is required to enforce, any state or federal effluent limitations
14 or regulations, water quality-related effluent limitations,
15 national standards of performance, toxic and pretreatment
16 standards, or water quality standards which apply to the source,
17 or any such standards in the vicinity of the source, are being
18 exceeded, and shall determine the impact on such water quality
19 standards from the source. The director, in order to effectuate
20 the purposes of sections 644.006 to 644.141, shall deny a permit
21 if the source will violate any such acts, regulations,
22 limitations or standards or will appreciably affect the water
23 quality standards or the water quality standards are being
24 substantially exceeded, unless the permit is issued with such
25 conditions as to make the source comply with such requirements
26 within an acceptable time schedule. Prior to the development or
27 renewal of a general permit or permit by rule, for aquaculture,
28 the director shall convene a meeting or meetings of permit

1 holders and applicants to evaluate the impacts of permits and to
2 discuss any terms and conditions that may be necessary to protect
3 waters of the state. Following the discussions, the director
4 shall finalize a draft permit that considers the comments of the
5 meeting participants and post the draft permit on notice for
6 public comment. The director shall concurrently post with the
7 draft permit an explanation of the draft permit and shall
8 identify types of facilities which are subject to the permit
9 conditions. Affected public or applicants for new general
10 permits, renewed general permits or permits by rule may request a
11 hearing with respect to the new requirements in accordance with
12 this section. If a request for a hearing is received, the
13 commission shall hold a hearing to receive comments on issues of
14 significant technical merit and concerns related to the
15 responsibilities of the Missouri clean water law. The commission
16 shall conduct such hearings in accordance with this section.
17 After consideration of such comments, a final action on the
18 permit shall be rendered. The time between the date of the
19 hearing request and the hearing itself shall not be counted as
20 time elapsed pursuant to subdivision (1) of subsection 13 of this
21 section.

22 5. The director shall grant or deny the permit within sixty
23 days after all requirements of the Federal Water Pollution
24 Control Act concerning issuance of permits have been satisfied
25 unless the application does not require any permit pursuant to
26 any federal water pollution control act. The director or the
27 commission may require the applicant to provide and maintain such
28 facilities or to conduct such tests and monitor effluents as

1 necessary to determine the nature, extent, quantity or degree of
2 water contaminant discharged or released from the source,
3 establish and maintain records and make reports regarding such
4 determination.

5 6. The director shall promptly notify the applicant in
6 writing of his or her action and if the permit is denied state
7 the reasons therefor. The applicant may appeal to the commission
8 from the denial of a permit or from any condition in any permit
9 by filing notice of appeal with the commission within thirty days
10 of the notice of denial or issuance of the permit. After a final
11 action is taken on a new or reissued general permit template, a
12 potential applicant for the general permit who can demonstrate
13 that he or she is or may be adversely affected by any permit term
14 or condition may appeal the terms and conditions of the general
15 permit template within thirty days of the department's issuance
16 of the general permit template. The commission shall set the
17 matter for hearing not less than thirty days after the notice of
18 appeal is filed. In no event shall a permit constitute
19 permission to violate the law or any standard, rule or regulation
20 promulgated pursuant thereto.

21 7. In any hearing held pursuant to this section that
22 involves a permit, license, or registration, the burden of proof
23 is on the [applicant for a permit] party specified in section
24 640.012. Any decision of the commission made pursuant to a
25 hearing held pursuant to this section is subject to judicial
26 review as provided in section 644.071.

27 8. In any event, no permit issued pursuant to this section
28 shall be issued if properly objected to by the federal government

1 or any agency authorized to object pursuant to any federal water
2 pollution control act unless the application does not require any
3 permit pursuant to any federal water pollution control act.

4 9. Permits may be modified, reissued, or terminated at the
5 request of the permittee. All requests shall be in writing and
6 shall contain facts or reasons supporting the request.

7 10. Unless a site-specific permit is requested by the
8 applicant, aquaculture facilities shall be governed by a general
9 permit issued pursuant to this section with a fee not to exceed
10 two hundred fifty dollars pursuant to subdivision (5) of
11 subsection 6 of section 644.052. However, any aquaculture
12 facility which materially violates the conditions and
13 requirements of such permit may be required to obtain a
14 site-specific permit.

15 [10.] 11. No manufacturing or processing plant or operating
16 location shall be required to pay more than one operating fee.
17 Operating permits shall be issued for a period not to exceed five
18 years after date of issuance, except that general permits shall
19 be issued for a five-year period, and also except that neither a
20 construction nor an annual permit shall be required for a single
21 residence's waste treatment facilities. Applications for renewal
22 of an operating permit shall be filed at least one hundred eighty
23 days prior to the expiration of the existing permit.

24 [11.] 12. Every permit issued to municipal or any publicly
25 owned treatment works or facility shall require the permittee to
26 provide the clean water commission with adequate notice of any
27 substantial new introductions of water contaminants or pollutants
28 into such works or facility from any source for which such notice

1 is required by sections 644.006 to 644.141 or any federal water
2 pollution control act. Such permit shall also require the
3 permittee to notify the clean water commission of any substantial
4 change in volume or character of water contaminants or pollutants
5 being introduced into its treatment works or facility by a source
6 which was introducing water contaminants or pollutants into its
7 works at the time of issuance of the permit. Notice must
8 describe the quality and quantity of effluent being introduced or
9 to be introduced into such works or facility by a source which
10 was introducing water contaminants or pollutants into its works
11 at the time of issuance of the permit. Notice must describe the
12 quality and quantity of effluent being introduced or to be
13 introduced into such works or facility and the anticipated impact
14 of such introduction on the quality or quantity of effluent to be
15 released from such works or facility into waters of the state.

16 [12.] 13. The director or the commission may require the
17 filing or posting of a bond as a condition for the issuance of
18 permits for construction of temporary or future water treatment
19 facilities or facilities that utilize innovative technology for
20 wastewater treatment in an amount determined by the commission to
21 be sufficient to ensure compliance with all provisions of
22 sections 644.006 to 644.141, and any rules or regulations of the
23 commission and any condition as to such construction in the
24 permit. For the purposes of this section, "innovative technology
25 for wastewater treatment" shall mean a completely new and
26 generally unproven technology in the type or method of its
27 application that bench testing or theory suggest has
28 environmental, efficiency, and cost benefits beyond the standard

1 technologies. No bond shall be required for designs approved by
2 any federal agency or environmental regulatory agency of another
3 state. The bond shall be signed by the applicant as principal,
4 and by a corporate surety licensed to do business in the state of
5 Missouri and approved by the commission. The bond shall remain
6 in effect until the terms and conditions of the permit are met
7 and the provisions of sections 644.006 to 644.141 and rules and
8 regulations promulgated pursuant thereto are complied with.

9 [13.] 14. (1) The department shall issue or deny
10 applications for construction and site-specific operating permits
11 received after January 1, 2001, within one hundred eighty days of
12 the department's receipt of an application. For general
13 construction and operating permit applications received after
14 January 1, 2001, that do not require a public participation
15 process, the department shall issue or deny the requested permits
16 within sixty days of the department's receipt of an application.

17 (2) If the department fails to issue or deny with good
18 cause a construction or operating permit application within the
19 time frames established in subdivision (1) of this subsection,
20 the department shall refund the full amount of the initial
21 application fee within forty-five days of failure to meet the
22 established time frame. If the department fails to refund the
23 application fee within forty-five days, the refund amount shall
24 accrue interest at a rate established pursuant to section 32.065.

25 (3) Permit fee disputes may be appealed to the commission
26 within thirty days of the date established in subdivision (2) of
27 this subsection. If the applicant prevails in a permit fee
28 dispute appealed to the commission, the commission may order the

1 director to refund the applicant's permit fee plus interest and
2 reasonable attorney's fees as provided in sections 536.085 and
3 536.087. A refund of the initial application or annual fee does
4 not waive the applicant's responsibility to pay any annual fees
5 due each year following issuance of a permit.

6 (4) No later than December 31, 2001, the commission shall
7 promulgate regulations defining shorter review time periods than
8 the time frames established in subdivision (1) of this
9 subsection, when appropriate, for different classes of
10 construction and operating permits. In no case shall commission
11 regulations adopt permit review times that exceed the time frames
12 established in subdivision (1) of this subsection. The
13 department's failure to comply with the commission's permit
14 review time periods shall result in a refund of said permit fees
15 as set forth in subdivision (2) of this subsection. On a
16 semiannual basis, the department shall submit to the commission a
17 report which describes the different classes of permits and
18 reports on the number of days it took the department to issue
19 each permit from the date of receipt of the application and show
20 averages for each different class of permits.

21 (5) During the department's technical review of the
22 application, the department may request the applicant submit
23 supplemental or additional information necessary for adequate
24 permit review. The department's technical review letter shall
25 contain a sufficient description of the type of additional
26 information needed to comply with the application requirements.

27 (6) Nothing in this subsection shall be interpreted to mean
28 that inaction on a permit application shall be grounds to violate

1 any provisions of sections 644.006 to 644.141 or any rules
2 promulgated pursuant to sections 644.006 to 644.141.

3 [14.] 15. The department shall respond to all requests for
4 individual certification under Section 401 of the Federal Clean
5 Water Act within the lesser of sixty days or the allowed response
6 period established pursuant to applicable federal regulations
7 without request for an extension period unless such extension is
8 determined by the commission to be necessary to evaluate
9 significant impacts on water quality standards and the commission
10 establishes a timetable for completion of such evaluation in a
11 period of no more than one hundred eighty days.

12 [15.] 16. All permit fees generated pursuant to this
13 chapter shall not be used for the development or expansion of
14 total maximum daily loads studies on either the Missouri or
15 Mississippi rivers.

16 17. The department shall implement permit shield provisions
17 equivalent to the permit shield provisions implemented by the
18 U.S. Environmental Protection Agency pursuant to the Clean Water
19 Act Section 402(k), 33 U.S.C. 1342(k), and its implementing
20 regulations, for permits issued pursuant to chapter 644.

21 644.054. 1. Fees imposed in sections 644.052 and 644.053
22 shall, except for those fees imposed pursuant to subsection 4 and
23 subsections 6 to 13 of section 644.052, become effective October
24 1, 1990, and shall expire [December 31, 2010] September 1, 2013.
25 Fees imposed pursuant to subsection 4 and subsections 6 to 13 of
26 section 644.052 shall become effective August 28, 2000, and shall
27 expire on [December 31, 2010] September 1, 2013. The clean water
28 commission shall promulgate rules and regulations on the

1 procedures for billing and collection. All sums received through
2 the payment of fees shall be placed in the state treasury and
3 credited to an appropriate subaccount of the natural resources
4 protection fund created in section 640.220. Moneys in the
5 subaccount shall be expended, upon appropriation, solely for the
6 administration of sections 644.006 to 644.141. Fees collected
7 pursuant to subsection 10 of section 644.052 by a city, a public
8 sewer district, a public water district or other publicly owned
9 treatment works are state fees. Five percent of the fee revenue
10 collected shall be retained by the city, public sewer district,
11 public water district or other publicly owned treatment works as
12 reimbursement of billing and collection expenses.

13 2. The commission may grant a variance pursuant to section
14 644.061 to reduce fees collected pursuant to section 644.052 for
15 facilities that adopt systems or technologies that reduce the
16 discharge of water contaminants substantially below the levels
17 required by commission rules.

18 3. Fees imposed in subsections 2 to 6 of section 644.052
19 shall be due on the date of application and on each anniversary
20 date of permit issuance thereafter until the permit is
21 terminated.

22 4. The director of the department of natural resources
23 shall conduct a comprehensive review of the fee structure in
24 sections 644.052 and 644.053. The review shall include
25 stakeholder meetings in order to solicit stakeholder input. The
26 director shall submit a report to the general assembly by
27 December 31, 2012, which shall include its findings and a
28 recommended plan for the fee structure. The plan shall also

1 include time lines for permit issuance, provisions for expedited
2 permits, and recommendations for any other improved services
3 provided by the fee funding.

4 644.071. 1. All final orders or determinations of the
5 commission or the director made pursuant to the provisions of
6 sections 644.006 to 644.141 are subject to judicial review
7 pursuant to the provisions of chapter 536, except that, the
8 provisions of section 536.110 notwithstanding, all actions
9 seeking judicial review of any final order or determination of
10 the commission or the director shall be filed in the court of
11 appeals instead of in the circuit court. No judicial review
12 shall be available, however, unless and until all administrative
13 remedies are exhausted.

14 2. In any suit filed pursuant to section 536.050 concerning
15 the validity of the commission's standards, rules and
16 regulations, the court shall review the record made before the
17 commission to determine the validity and reasonableness of such
18 standards, rules, limitations, and regulations and may hear such
19 additional evidence as it deems necessary.

20 644.145. 1. When issuing permits under this chapter for
21 discharges from combined or separate sanitary sewer systems or
22 publicly-owned treatment works, or when enforcing provisions of
23 this chapter or the Federal Water Pollution Control Act, 33
24 U.S.C. 1251 et seq. pertaining to any portion of a combined or
25 separate sanitary sewer system or publicly-owned treatment works,
26 the department of natural resources shall make a finding of
27 affordability upon which to base such permits and decisions, to
28 the extent allowable under this chapter and the Federal Water

Pollution Control Act.

2. When used in this chapter and in standards, rules and regulations promulgated pursuant to this chapter, the following words and phrases mean:

(1) "Affordability", with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or household, taking into consideration the criteria described in subsection 3 of this section;

(2) "Financial capability", the financial capability of a community to make investments necessary to make water quality-related improvements.

3. The department of natural resources shall adopt procedures by which it will determine whether a permit or decision is affordable. Such determination shall be based upon reasonably available empirical data and shall include an assessment of the affordability of the permit or decision to any private or public person or entity affected by such permit. The determination shall be based upon the following criteria:

(1) A community's financial capability and ability to raise or secure necessary funding;

(2) Affordability of pollution control options for the individuals or households of the community;

(3) An evaluation of the overall costs and environmental benefits of the control technologies;

(4) An inclusion of ways to reduce economic impacts on distressed populations in the community, including but not

1 limited to, low and fixed income populations. This requirement
2 includes but is not limited to:

3 (a) Allowing adequate time in implementation schedules to
4 mitigate potential adverse impacts on distressed populations
5 resulting from the costs of the improvements and taking into
6 consideration local community economic considerations; and

7 (b) Allowing for reasonable accommodations for regulated
8 entities when inflexible standards and fines would impose a
9 disproportionate financial hardship in light of the environmental
10 benefits to be gained;

11 (5) An assessment of other community investments relating
12 to environmental improvements;

13 (6) An assessment of factors set forth in the United States
14 Environmental Protection Agency's guidance, including but not
15 limited to the "Combined Sewer Overflow-Guidance for Financial
16 Capability Assessment and Schedule Development" that may ease the
17 cost burdens of implementing wet weather control plans, including
18 but not limited to small system considerations, the attainability
19 of water quality standards, and the development of wet weather
20 standards; and

21 (7) An assessment of any other relevant local community
22 economic condition.

23 4. Prescriptive formulas and measures used in determining
24 financial capability, affordability, and thresholds for
25 expenditure, such as median household income, should not be
26 considered to be the only indicator of a community's ability to
27 implement control technology and shall be viewed in the context
28 of other economic conditions rather than as a threshold to be

1 achieved.

2 5. If the department of natural resources fails to make a
3 finding of affordability as indicated in this section, the
4 proposed permit or decision shall be null, void and
5 unenforceable.

6 6. The department of natural resources' findings under this
7 section may be appealed to the commission pursuant to subsection
8 6 of section 644.051.

9 701.033. 1. The department shall have the power and duty
10 to:

11 (1) Promulgate such rules and regulations as are necessary
12 to carry out the provisions of sections 701.025 to 701.059;

13 (2) Cause investigations to be made when a violation of any
14 provision of sections 701.025 to 701.059 or the on-site sewage
15 disposal rules promulgated under sections 701.025 to 701.059 is
16 reported to the department;

17 (3) Enter at reasonable times and determining probable
18 cause that a violation exists, upon private or public property
19 for the purpose of inspecting and investigating conditions
20 relating to the administration and enforcement of sections
21 701.025 to 701.059 and the on-site sewage disposal rules
22 promulgated under sections 701.025 to 701.059;

23 (4) Authorize the trial or experimental use of innovative
24 systems for on-site sewage disposal, after consultation with the
25 staff of the Missouri clean water commission, upon such
26 conditions as the department may set;

27 (5) Provide technical assistance and guidance to any other
28 administrative authority in the state on the regulation and

1 enforcement of standards for individual on-site sewage disposal
2 systems, at the request of such other administrative authority,
3 or when the department determines that such assistance or
4 guidance is necessary to prevent a violation of sections 701.025
5 to 701.059.

6 2. No rule or portion of a rule promulgated under the
7 authority of sections 701.025 to 701.059 shall become effective
8 unless it has been promulgated pursuant to the provisions of
9 section 536.024.

10 701.058. The department of natural resources and the
11 department of health and senior services shall jointly hold
12 stakeholder meetings for the purpose of gathering data and
13 information regarding permits and inspections for on-site sewage
14 disposal systems. The departments shall evaluate the data and
15 information obtained and present their findings and
16 recommendations in a report to be submitted to the general
17 assembly by December 31, 2011.

18 Section 1. Notwithstanding the provisions of section 1.140,
19 RSMo, to the contrary, the provisions of sections 37.970,
20 67.4500, 67.4505, 67.4510, 67.4515, 67.4520, 192.1250, 247.060,
21 253.090, 304.120, 442.014, 444.771, 444.773, 537.292, 621.250,
22 640.018, 640.128, 640.850, 643.020, 643.040, 643.050, 643.060,
23 643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237,
24 643.240, 643.242, 643.245, 643.250, 644.036, 644.051, 644.054,
25 644.071, 644.145, 701.033, 701.058, and 1 of this act shall be
26 nonseverable, and if any provision is for any reason held to be
27 invalid, such decision shall invalidate all of the remaining
28 provisions of sections 37.970, 67.4500, 67.4505, 67.4510,

1 67.4515, 67.4520, 192.1250, 247.060, 253.090, 304.120, 442.014,
2 444.771, 444.773, 537.292, 621.250, 640.018, 640.128, 640.850,
3 643.020, 643.040, 643.050, 643.060, 643.079, 643.080, 643.130,
4 643.191, 643.225, 643.232, 643.237, 643.240, 643.242, 643.245,
5 643.250, 644.036, 644.051, 644.054, 644.071, 644.145, 701.033,
6 701.058, and 1 of this act.

7 [386.850. The Missouri energy task force created
8 by executive order 05-46 shall reconvene at least one
9 time per year for the purpose of reviewing progress
10 made toward meeting the recommendations set forth in
11 the task force's final report as issued under the
12 executive order. The task force shall issue its
13 findings in a status report to the governor and general
14 assembly no later than December thirty-first of each
15 year.]

16
17 [643.253. As used in sections 643.253 and
18 643.255, the following terms mean:

19 (1) "Asbestos", the asbestiform varieties of
20 chrysotile, crocidolite, amosite, anthophyllite,
21 tremolite and actinolite;

22 (2) "Asbestos abatement projects", an activity
23 undertaken to encapsulate, enclose or remove ten square
24 feet or sixteen linear feet or more of friable
25 asbestos-containing materials from buildings and other
26 air contaminant sources, or to demolish buildings and
27 other air contaminant sources containing ten square
28 feet or sixteen linear feet or more;

29 (3) "Friable asbestos-containing material", any
30 material that contains more than one percent asbestos,
31 by weight, which is applied to ceilings, walls,
32 structural members, piping, ductwork or any other part
33 of a building or other air contaminant sources and
34 which, when dry, may be crumbled, pulverized or reduced
35 to powder by hand pressure.]

36
37 [643.260. As used in sections 643.260 to 643.265,
38 the following terms mean:

39 (1) "Asbestos", the asbestiform varieties of
40 chrysotile, crocidolite, amosite, anthophyllite,
41 tremolite and actinolite;

42 (2) "Asbestos-containing material", any material
43 which contains more than one percent of asbestos by
44 weight;

45 (3) "Friable asbestos-containing material", any
46 material that contains more than one percent asbestos,

1 by weight, which is applied to ceilings, walls,
2 structural members, piping, ductwork or any other part
3 of a building or other air contaminant sources and
4 which, when dry, may be crumbled, pulverized or reduced
5 to powder by hand pressure;

6 (4) "Person", any individual, partnership,
7 copartnership, firm, company, or public or private
8 corporation, association, joint stock company, trust,
9 the state, political subdivision, or any agency, board,
10 department or bureau of the state or federal
11 government, or any other legal entity whatever which is
12 recognized by law as the subject of rights and duties;

13 (5) "School district", seven-director districts,
14 urban school districts and metropolitan school
15 districts, as defined in section 160.011.]
16

17 [701.332. For purposes of sections 643.225 to
18 643.250, the term "project" shall exclude any
19 single-family owner-occupied dwellings and vacant
20 public or privately owned residential structures of
21 four dwelling units or less being demolished for the
22 sole purpose of public health, safety or welfare. All
23 vacant structures of four dwelling units or less
24 located in any city not within a county shall be exempt
25 from all geographical and time restrictions for the
26 purpose of demolition pursuant to the National
27 Emissions Standards for Asbestos. Excluded structures
28 that are not located within a city not within a county
29 shall be geographically dispersed. All excluded
30 structures shall be demolished pursuant to a public
31 safety determination by a local or state governmental
32 agency and pose a threat to public safety.]

33 Section B. Because immediate action is necessary to
34 maintain regulatory oversight by the state of Missouri, the
35 repeal of sections 386.850, 643.253, 643.260, and 701.332, the
36 repeal and reenactment of sections 253.090, 444.773, 643.130,
37 644.036, 644.051, 644.054, 644.071, and 701.033, and the
38 enactment of sections 37.970, 67.4500, 67.4505, 67.4510, 67.4515,
39 67.4520, 192.1250, 444.771, 640.018, 640.128, 640.850, 644.145,
40 701.058, and 1 of this act is deemed necessary for the immediate
41 preservation of the public health, welfare, peace, and safety,
42 and is hereby declared to be an emergency act within the meaning

1 of the constitution, and the repeal of sections 386.850, 643.253,
2 643.260, and 701.332, the repeal and reenactment of sections
3 253.090, 444.773, 643.130, 644.036, 644.051, 644.054, 644.071,
4 and 701.033, and the enactment of sections 37.970, 67.4500,
5 67.4505, 67.4510, 67.4515, 67.4520, 192.1250, 444.771, 640.018,
6 640.128, 640.850, 644.145, 701.058, and 1 of this act shall be in
7 full force and effect upon its passage and approval.